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New Jersey Judicial Council Formulates Standards for Efficient Judicial System

THE Judicial Council of New Jersey, in making its recommendations for changes in the judicial system of the State, in its annual report, has "endeavored to incorporate every sound principle thus far developed looking to the efficient organization and conduct of courts, primarily for the benefit of citizens who have occasion to litigate their differences therein." These proposed changes are presented as a result of an investigation undertaken at the direction of the Legislature which on April 27, 1931, instructed the Judicial Council to "make a complete study of the status of the judicial system of the state and report and submit to the next Legislature its findings and recommendations as to amendments to the Judiciary Article of the State Constitution."

"In drafting the proposed amendments to the Judiciary Article," the report states, "we have not only considered the problem in the light of the Judicial history of the State, but we have also studied the matter analytically. In this connection, we have made a study of the court system of many States of the Union, with a view to determining upon the system most applicable to the needs of New Jersey, and we have reviewed substantially all the literature which has appeared on the subject during the past twenty years."

The principles brought into high relief by the process thus described are set out in a portion of the report entitled "Standards Governing the Proposed Constitutional Amendments," and are, briefly, as follows: 1. The Principle of Division of Labor; The Four Systems of Courts. 2. The Principle of a Single Task for Each Judge. 3. The Principle That Judges Shall Be Trained in the Law They Are Called Upon to Administer. 4. The Principle That Judges Shall Not Practice Law. 5. The Principle That Judges Shall Not Hold Political Office. 6. The Principle That the Appointment of Judges Should Be Subject to Confirmation by the Senate. 7. The Principle That Courts Should Be Built Upon a Bi-Partisan Basis with the Presumptive Right in Every Judge to Be Reappointed if His Record Warrants. 8. The Principle of One Trial and One Appeal as of Right. 9. The Principle of Supervision. 10. The Principle of Dispatch. 11. The Principle That the Courts Exist Principally for the Benefit of Litigants.

Some of these principles direct attention to peculiarities in the New Jersey system as, for instance, that which declares that judges shall be trained in the law they are called upon to administer. Under this head the report speaks of "the anomalous practice which has developed under the Constitution of 1844 of appointing a certain number of laymen as judges of our highest court. This course was never contemplated by the framers of the Constitution, any more than the appointment of laymen to the Supreme Court or the chancellorship. They appear to have believed that the per diem compensation of eight dollars, plus mileage (the same as was then paid to members of Congress) would attract elderly lawyers who had retired from practice. It was soon found, however, that appointments were being made from political considerations entirely without regard to professional qualifications. Hence, the habit of referring to the six judges of the Court of Errors and Appeals specially appointed as 'lay judges,' although many distinguished lawyers have served in that capacity, for example, Amzi Dodd, Frederic Adams

G. D. W. Vroom, James B. Dill, John J. White, and Henry E. Ackerson, Jr. (not to mention any of the present members of the court), all of whom wrote opinions which rank with the best handed down by the Court of Last Resort.

"It is rather difficult to explain," the report continues, "the public policy which requires lawyers who would appear before the Court of Errors and Appeals to be high school graduates, pass at least two years of college work, serve a clerkship of three years in a law office (the greater portion of which time is generally spent in law school), pass examinations for admission as an attorney, practice at the bar for three years and then pass another examination to be admitted as a counsellor, before becoming privileged to practice before a court, the highest in the state, which settles finally our decided law, some of the judges of which had never looked at a law book until after they had taken their oath of office and donned their judicial robes.

"Either the standards prescribed by the Supreme Court for admission to practice before the Court of Errors and Appeals are wrong or the method of appointment of laymen to the court is wrong. The standards underlying the admission of counsellors-at-law and the absence of standards accompanying the appointment of some of the 'lay judges' present an irreconcilable conflict. The situation is one which has caused amusement in other jurisdictions equalled only by the provision in the Constitution of Indiana, which until recently permitted any one to practice law who was of good moral character."

Another peculiarity opposed to one of the principles above mentioned is referred to in the report as follows: "While there are no statutory prohibitions on the practice of law by members of the Supreme Court or of the Court of Chancery, it is, and for many years has been, against the tradition of those courts for their members to engage in private practice. The Judges of the Court of Errors and Appeals, however, are paid on a per diem basis for the time devoted by them to the work of the Courts. Such of them as are lawyers are, therefore, at liberty to, and as a matter of fact do, practice law during their free time.

"In the opinion of the Judicial Council, the time has come to bring New Jersey in line with universally accepted practice elsewhere by providing definitely in the Constitution that none of the judges of courts of state-wide jurisdiction shall practice law; and that the county judges in the larger counties likewise shall be precluded from private practice, leaving it to the legislature from time to time, as increase or shift in population may warrant, to extend the same principle to other subordinate courts."

The power to assign judges, to supervise their work, to make rules for the Supreme and Circuit Courts and inferior courts of law, with consequent accountability for the work of the courts, is given to the Chief Justice. This official, under the proposed amendments, says the report, is "given the power, similar to that always exercised by the chancellor, to assign the justices of the Supreme Court to the several parts of the Supreme Court and to the several judicial districts, to assign the circuit court judges to the several counties and to assign the judges of the inferior courts of law to such counties and duties as the public good may require. Thus, the entire 'man power' of the courts of law is put at the direction and immediate disposal of the Chief Justice, so that he will, at all times, have within his control the assigning of the various judges where they will best serve the public good. This, it is submitted, will act immediately and persistently to remedy any undue accumulation of cases in one court or particular parts of the State. . . .

"Inasmuch as the Chief Justice will be the person in the State most familiar with the practice and proceedings in the law courts, he is given the power, under the proposed amendments, to regulate the practice and procedure, not only in the Supreme Court but also in the Circuit Court and the inferior courts of law, by prescribing the rules of court. This power corresponds to the rule-making power always exercised by the chancellor in his court, and places the responsibility definitely upon one central head to see to it that the rules are adequate to meet the needs of the several courts under his jurisdiction, and that they are uniform in the several classes of courts."

The other principles set out in the report are briefly explained and their application to the immediate judicial problems of the State is made clear. This part of the Council's report in particular will no doubt be found useful and interesting to those in other states who are planning judicial changes along sound and approved lines. The report is signed by W. Holt Apgar, Elmer E. Brown, Charles L. Carrick, Clarence E. Case, Nelson Y. Dungan, William W. Evans, Dallas Flanagan, J. Henry Harrison, Vivian M. Lewis, A. Dayton Oliphant, Emerson L. Richards, William A. Stevens, Joseph G. Wolber, Arthur T. Vanderbilt, Chairman, H. Edward Toner, Secretary.

Recent Alabama Statute Defining Practice of Law Upheld

THE recent Alabama statute defining the practice of law was upheld by the Supreme Court of that State in a recent test case involving the business of a collection agency. It was held at the same time that the conduct of a collection agency as set forth in the petition in the nature of a quo warranto on which the proceedings in the lower court were based, constituted the unlawful practice of law. The title of the case is Bernard Berk vs. State of Alabama, ex rel. R. Dupont Thompson, Relator etc., and the decision of the higher court, affirming the lower court's judgment of exclusion and prohibition against the defendant "until he has legally qualified to practice law by securing the proper license therefor," was handed down in an opinion by Justice Thomas.

"The petition," the opinion states, "was filed in the name of the State of Alabama on the relation of R. Dupont Thompson and by R. Dupont Thompson, questioning the right of the defendant to engage in the profession of the practice of law, which requires a license, in Birmingham, Jefferson County, Alabama, without first being so licensed. The relator alleged therein that he was a duly licensed practising attorney, residing and practicing law in Birmingham, Jefferson County, Alabama, and at that time was the President of the Birmingham Bar Association; that the defendant was engaged in the

business of conducting a commercial collecting agency as a vocation, within the City of Birmingham, in which vocation he was holding himself out to the public as being ready, able and willing, for a consideration paid or to be paid him, to represent out of court anyone in the adjustment, collection, or compromise of any defaulted, controverted or disputed account, claim or demand, which such person might have against anyone else, with neither of whom defendant was in privity or in the relation of employer or employee in the ordinary sense, and when in defendant's judgment expedient to turn over to his attorney to prosecute in court, any such claim or demand, and that the relator habitually did so turn over such claim or demand to his attorney for prosecution in court, when in his judgment it was necessary; and that the defendant had expressed his intention to continue handling such business in the future in the same manner."

Other averments of the petition, giving details of a concrete case in which the defendant was alleged to have been illegally practicing law, are then set forth. The opinion then takes up consideration of the question, "Did the averred acts constitute the practice of law per se?" It reviews the authorities, among them the recent case of Boykin, Solicitor-General vs. Hopkins et al (162 S. E. 796), in which the Georgia court had overruled its case of Atlanta Title and Trust Co. vs. Boykin (17 Ga. 437; 157 S. E. 4550). "It is unnecessary to observe," it continues, "a fact of common knowledge, that it has been the usual business of a lawyer for the past one hundred years in this State, as shown by the decisions we have cited, to engage in office practice not necessitating representation in court as well as in cases needed in and about the collection and settlement of claims and demands. The acts recited in the petition constituted the practicing of law as defined by the statutes relating to and defined in General Acts of 1931, page 606. Such was the legislative intent and is the construction placed by this court on the several statutes and the common law relating to and regulating the practice of law and the duty of an attorney to his client."

The opinion then points out distinguishable features in the decision in Kendrick vs. State (218 Ala., 277; 120 So. 142) which render it "inapt as an authority against the judgment of ouster rendered against defendant," and concluded by upholding the constitutionality of the present statute in the following words: "It is well established that the act in question (General Acts 1931, page 606) is a valid enactment under the police power, and offends neither State nor Federal Constitutions; is not usurpation of judicial power; does not deprive of liberty or property without due process; neither denies to citizens equal civil rights, nor grants special privileges and immunities; does not violate, impair, or deny rights retained by the people, and does not violate the Fourteenth Amendment to the Federal Constitution (citing cases)—as applied to the facts of this case."

Selden Society's Volume for 1932

THIS Society, which publishes the sources of the English law, is well known both to the English and to the American bar. It is well up to date with its publications and its volume for 1932 is just published. It is Volume 49, Select Cases Concerning the Law Merchant, Volume III, Supplementary covering the Central Courts, edited by Hubert Hall, Litt. D. (Camb.), F. S. A. Better still the Selden Society this year has already issued as an extra volume a Bibliography of Abridgments, Digests, Dictionaries and Indexes of English Law to the Year 1800 by John D. Cowley. The Secretary and Treasurer for the United States is Mr. R. W. Hale of 60 State Street, Boston, Massachusetts, who will answer any inquiries from subscribers or others.

Exhibition by the Law Library of Congress

IN commemoration of the laying of the corner stone of the future home of the Supreme Court, and of the meeting of the American Bar Association, which coincide with its own one hundredth anniversary, the Law Library of Congress is preparing an exhibit relating to the history of American jurisprudence, including the Supreme Court and the Bar. The exhibition will consist of original manuscripts and printed books from the Law Library collections, supplemented by additional material loaned for this purpose by the Clerk of the Supreme Court and by the Divisions of Manuscripts and Fine Arts of the Library of Congress.

From these sources there will be seen a volume of holograph opinions, penned by Chief Justice Marshall, Justice Story, and others. A curious item will consist of the rules of the court adopted between 1790 and 1835, written in many different hands and preserved in children's copybooks. It will doubtless be a matter of surprise to many to learn that in its early days our highest appellate court presided over a jury trial. One of the pieces exhibited will be a writ of venire, returnable August 3d, 1795.

Other items will consist of Chief Justice Chase's certificate of appointment, signed by President Lincoln, and his oath of office, court minutes (1798 and 1801), manuscript dockets and assignments of circuits. These latter present many distinguished autographs, including those of John Jay, William Cushing, James Wilson, John Blair, James Iredell, Thomas Johnson, Oliver Ellsworth, John Marshall, Bushrod Washington and Samuel Chase.

Among the printed works will be a number of volumes selected from the library purchased from Thomas Jefferson in 1815. Many of these contain manuscript notes in Jefferson's handwriting and all contain his private identification mark which consisted, whenever the signature I or T appeared, of putting in an additional T or I in ink, thus completing his initials.

The exhibit will also contain a selection of printed records and briefs, prepared and submitted to the Court by eminent members of the Bar. Included among these will be a copy of the first transcript of record ever printed for use of the Supreme Court, that of Mitchell vs. U. S., January term, 1831. On others appear such distinguished names as those of Daniel Webster, Rufus Choate, Reverdy Johnson, and David Dudley Field.

Further interesting items will consist of several volumes from the library of Justice Samuel Chase, many containing copious marginal notes, and manuscript volumes chiefly relating to Maryland pleading, in the hand of Samuel Chase. The only member of the Supreme Court who was ever impeached, Justice Chase was acquitted after a mem-

orable trial which resulted in a vast amount of acrimonious political controversy. A copy of this trial will be included amongst the exhibits.

A collection of portraits of the Justices of the Supreme Court and a number of volumes of colonial law and rare tomes of the common and civil law will complete the exhibition.

The Far-Flung Chicago Gangster Game

THE little article "Story Hour in a Law Office," published in the July issue, has brought communications to the JOURNAL showing that this particular "racket" has been attempted in various other parts of the country. The racketeer, it will be recalled, represented himself as a Chicago beer baron, a farmer, associate of Capone and others of that type, but at present the object of their enmity because he was arranging to pay the government his income tax. He further spoke of a million dollars he had on deposit in safety deposit boxes in Chicago and said he needed the aid of an attorney to help him secure it. In the meantime he needed a loan, etc.

From a Fort Worth, Texas, lawyer comes the following contribution to the literature on this subject:

"This same man came to my office and took up approximately an hour's time telling me the same story exactly, except instead of going to Cuba he wanted to go to the Gulf of Mexico, or somewhere along the shore thereof. However, he not only failed to defraud me of anything, but it is with the greatest pleasure that I look up my cash journal, and on the 22nd day of May, 1930, I find the entry where he paid me a $10 consultation fee for taking up my time.

"After listening to his story, I suggested a means by which I could obtain his money very easily, and refused to put out any money or send him to the Gulf, as he requested. After paying my fee he promised to send me $100, presumably when he obtained his cache. I was very dubious about his being the person claimed until he paid me the fee, after which time I was rather inclined to believe that he was the person claimed, but have often wondered about it and have never been entirely convinced, but, of course, it must be the same person mentioned in your article."

The record is further enriched by the following communication from a member in Syracuse, N. Y.:

"The article in your July issue under the heading, 'Story Hour in a Lawyer's Office,' was a source of great interest and caused me no little amusement, as I had been the recipient of a call from this same gentleman last summer. It is my recollection that he asked to be referred to a young lawyer, no doubt with the idea that one less experienced in the ways of the world might prove more gullible. The story was identical with that outlined in your article, so far as it went. However, my prospective client did not arrive at the point of requesting an advance of funds, due perhaps partially to evident incredulity on my part.

"I referred him to a lawyer of more mature years, with whom I had previously been associated, and advised this lawyer of the reference, but the subject did not put in further appearance in Syracuse, so far as I know."

An unsuccessful attempt to work the same sort of racket has also been reported from Birmingham, Ala. Whether it is the same man in all cases, as our correspondents assume, may be open to question. It is quite possible that the idea came to various artists independently or that the original inventor of the plan relayed it to several members of his "profession." At any rate, it is the same racket in all essential particulars which is reported from the different localities.

Florida Bar Votes for Repeal of Eighteenth Amendment

A LETTER received from Mr. Ed R. Bentley, Secretary of the Florida Bar Association, states that the advocates of the repeal of the 18th Amendment and the Volstead Act gained an overwhelming majority in the prohibition poll just completed by the Florida State Bar Association. At the recent Hollywood Convention a resolution was adopted instructing the secretary to take a poll of the members on the following questions:

"1. In favor of the repeal of the 18th Amendment, the Volstead Act and all other orders and regulations for the enforcement thereof, leaving the matter of prohibition to the states protected by the proper enforcement of the Federal interstate commerce laws.

"2. In favor of retaining the 18th Amendment and Volstead Act substantially in their present form and efforts at enforcement continued.

"The secretary reports that he sent out 698 ballots and received replies from 394; 330 voting for repeal; 56 voting against repeal and for continued efforts at enforcement; 8 returned their cards but altered the form of ballot or stated that they did not believe in either proposition, and suggested other methods of handling the liquor question."

Divorce in the "Queen of the Antilles"

"THE Havana Divorce Office" is prepared to secure divorces for one and all very expeditiously and on reasonable terms, according to a printed circular received at this office. The circular gives information about the Cuban divorce law, pointing out that there are fifteen grounds for absolute divorce in Cuba. One of these is "mutual dissent," which certainly seems broad enough to cover most cases. What is more, the proceedings are delightfully quiet. The circular says:

"There is no publicity attached to the proceedings other than the constructive service of summons by publication in the Official Gazette, a Spanish language medium of limited circulation. According to private international law the decisions of the Cuban courts are entitled to full faith and credit in the United States and, having jurisdiction, their decrees of divorce are valid everywhere. When neither party is a resident of the country, the con-

sent of the defendant to the divorce would impart a binding effect.

"Excepting in mutual dissent proceedings, neither party is required to appear personally in court, all necessary appearances being made by attorney. Evidence may be introduced by deposition. Thus in a single day at Havana all arrangements may be completed for filing and conducting the suit. The plaintiff's presence will not thereafter be required."

There is also further information as to the notarial and consular preliminaries which should be attended to by Americans desiring to avail themselves of the facilities afforded by the "Queen of the Antilles." All of which goes to show that other parts of Latin America besides Mexico are aware of the pecuniary possibilities of the divorce business.

Massachusetts Court Renders Advisory Opinion on Marking Bar Examination Papers

A RATHER extraordinary bill introduced in the Massachusetts Senate, prohibiting the marking of the examination papers of applicants for admission to the Bar by any person not a member of the Board of Bar Examiners, was the subject of a request by the Senate for an advisory opinion from the Justices of the Supreme Judicial Court. The Senate wished to know, in substance, whether such a bill, if enacted, would be an unconstitutional interference with the functions of the Judicial Department of the Government. The Justices of the Supreme Judicial Court replied unhesitatingly that it would, in an opinion transmitted to the Senate on April 20, and reported in 180 N. E. 725, under the title, "In re: Opinion of the Justices." The Court said, in part:

"The establishment by the Constitution of the judicial department conferred authority necessary to the exercise of its powers as a co-ordinate department of government. It is an inherent power of such a department of government ultimately to determine the qualifications of those to be admitted to practice in its courts, for assisting in its work, and to protect itself in this respect from the unfit, those lacking in sufficient learning, and those not possessing good moral character. Chief Justice Taney stated succinctly and with finality in *Ex Parte Secombe,* 19 How. 9, 13: 'It has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed.'

" 'There is nothing in the Constitution, either in terms or by implication, to indicate an intent that the power of the judiciary over the admission of persons to become attorneys is subject to legislative control. The grant of legislative competency to the General Court is in broad language (c. 1 of the Constitution, and especially c. 1, § 1, art. 4). But it is subject to the impressive limitations of art. 30 of the Declaration of Rights already quoted. It does not embrace the power to override the judicial department of government as to the qualifications of those to be admitted to practice law. The inherent jurisdiction of the judicial department of government over attorneys at law is illustrated in several of our decisions to the effect that power to remove an attorney for misconduct, malpractice, or deficiency in character, although recognized by statute (G. L. c. 221, § 40, as amended by St. 1924, c. 134), is nevertheless inherent and exists without a statute. *Randall, petitioner,* 11 Allen, 472. *Matter of Carver,* 224 Mass. 169, 172, and cases cited. *Matter of Ulmer,* 268 Mass. 373, 397, and cases cited. No sound distinction can be drawn with respect to attorneys at law between the power to admit and the power to remove under the terms of the Constitution. . . .

"If the judicial department decides that the marking of the written examinations may be performed by competent persons not members of the board but acting under the direction of such members, that pertains directly to the ascertainment of the qualifications of applicants. It is a definite attribute of the judicial department and not an immaterial incident. The pending bill is different in its fundamental conception from many statutes indubitably valid, wherein practice and procedure both civil and criminal, rules of evidence, and substantive provisions of law have been altered. Statutes of that nature fall within the classification of wholesome and reasonable laws within the grant of power to the General Court to enact under the Constitution, and do not impinge upon the powers allotted to the judicial department. They are distinguishable in essential features from the pending bill, which directly affects the capacity of the judicial department to function."

The advisory opinion concluded with the statement that before the present plan of employing assistants to aid the Bar Examiners in marking the papers was adopted, it was approved by the Supreme Judicial Court.

Zoning Progress to Date

ACCORDING to a "Survey of Zoning Laws and Ordinances Adopted During 1931," written by Norman L. Knauss and issued by the Department of Commerce, "a total of more than 47,700,000 people residing in 1,150 zoned cities, towns, villages and unincorporated areas of towns were accorded the benefits of zoning regulations on January 1, 1932. This is a number greater than 69 per cent of the entire urban population of the United States. At the end of the same period zoning enabling acts had been adopted by 47 States and the District of Columbia, while the general home-rule provisions of the State of Washington have been constructed to permit cities of the first class in that State to adopt zoning regulations. Some of these enabling acts permit the adoption of zoning regulations by all municipalities within the state, some by municipalities of a particular class, and some only by cities specified in the act.

"The legislatures of 14 States enacted zoning measures during 1931, chiefly supplementary to prior zoning legislation. The exceptions were complete zoning enabling acts based on 'A Standard State Zoning Enabling Act' adopted by the legislatures of the States of Maryland and Vermont and a like law incorporated in the code of the State of West Virginia. Amendments by four States followed in whole or in part the text of the standard act."

SHALL FEDERAL JURISDICTION OF CONTROVERSIES BETWEEN CITIZENS OF DIFFERENT STATES BE PRESERVED?

Constitutional Provisions Bearing on Subject—Different Forms Taken on by Efforts to Destroy or Impair Federal Jurisdiction in This Class of Cases—Reasons Assigned by Those Proposing This Vital Change Examined Seriatim—Failure of Advocates to Meet the Burden That Is Properly Upon Them of Demonstrating the Constitutionality and Advisability of Such Measures

By Paul Howland
Chairman, American Bar Association's Committee on Jurisprudence and Law Reform

THIS question is now demanding serious consideration by reason of the persistent efforts of powerful influences to enact laws intended to destroy the jurisdiction entirely, or by taking away a little here and a little there, remove the ancient landmarks and fix new and restricted boundaries within which it may still be exercised.

Art. 3, Sec. 2 of the federal Constitution, provides that:

"The judicial power *shall* extend . . . to controversies between citizens of different states."

It is now proposed to say, by act of Congress, that the judicial power *shall not* extend to controversies between citizens of different states.

Constitutional objections at once suggest themselves and some have had the temerity to insist that the federal constitution cannot be amended by an act of Congress, and that an express grant of power in the constitution and an imperative command in the constitution to extend judicial power to certain subjects and classes of subjects cannot be ignored by Congress. A failure of Congress to comply with an express command to provide the machinery to extend this judicial power to controversies between citizens of different states might be called unconstitutional or anti-constitutional. Congress, however, has not been disobedient to this constitutional command but on the contrary has strictly obeyed it from the first Judicature Act in 1789 down to the present time.

The clause immediately preceding the diverse citizenship clause in Art 3, Sec. 2, par. 1, provides that:

"The judicial power shall extend . . . to controversies between a state and citizens of another state."

This clause was before the Supreme Court of the United States in *Chisholm Ex'r. vs. Georgia,* 2 Dallas, 420, in 1792, and the court held that "A citizen of South Carolina could sue the State of Georgia in assumpsit." It required the adoption of the Eleventh Amendment to eliminate that clause from the constitution and no one at that time even hinted that it might be done by an act of Congress.

An authentic definition of the diverse citizenship clause in the federal constitution is found in the case of *Terral vs. Burke Construction Co.,* 257 U. S. 529. The Supreme Court in a unanimous opinion there held that:

"A law of Arkansas was unconstitutional which provided for the revocation of a license to do business in that state whenever the corporation removed a case to the federal court under the diverse citizenship clause of the federal constitution."

Mr. Chief Justice Taft in delivering the opinion, said:

"The right to remove a case from a state to a federal court rests on the ground that the federal constitution confers upon citizens of one state the right to resort to federal courts in another; that state action, whether executive or legislative, calculated to curtail the free exercise of this right thus secured, is void, because the sovereign power of a state is subject to the limitation of the supreme fundamental law."

This case expressly overruled earlier cases which held to the contrary, although there were strong dissenting opinions in these earlier cases.

During the period that states were thus limiting the right of removal to the federal courts on the ground of diverse citizenship, corporations of other states in local state courts were often denied everything but a formal trial regardless of the merits owing to local prejudice against them and this condition obtained in many states until 1922 when the *Terrall* case squarely and expressly decided that the federal constitution conferred upon the citizens of one state the absolute right to resort to the federal courts in another.

The efforts to destroy or impair the federal jurisdiction in controversies between citizens of different states have taken on different forms.

First: Legislation providing for its absolute destruction by denying any jurisdiction to the federal courts in cases of diverse citizenship. A bill of this character has at this session been favorably reported to the Senate by the Judiciary Committee.

Second: Legislation providing for its very radical impairment by denying a corporation chartered under the laws of one state the right to remove a case to the federal court if it is carrying on business in another state and is sued in the courts of that state.

Third: By legislation proposing to increase the jurisdictional amountt in removal cases from the present figure of $3,000 to a larger amount.

Fourth: By legislation which denies jurisdiction to federal district courts to interfere by injunction, or otherwise, with the orders of state public utility boards. A bill of this character has at this session been favorably reported to the Senate by the Judiciary Committee.

The Judiciary Committee of the House has, however, refused a favorable report on a bill increasing the jurisdictional amount in removal cases from $3,000 to $7,500 and has refused a favorable report on a bill which forbids removal from a state to a federal court by a foreign corporation doing business in another state when sued in that state. This

legislation provided that the foreign corporation should be considered a citizen of the state in which it was sued and thus eliminate diversity of citizenship.

No action has yet been taken by the Judiciary Committee of the House upon legislation to do away with federal jurisdiction based on diverse citizenship or upon legislation taking away the jurisdiction of federal courts to enjoin in proper cases the orders of state public utility boards.

The American Bar Association has consistently opposed legislation of this character and the Congress has given very careful consideration to its arguments and has treated its representatives with great courtesy. Up to the present time the jurisdiction of the federal courts in controversies between citizens of different states has been maintained. The defense of this jurisdiction has in part been undertaken by the American Bar Association and the country at large knows very little of the contest being waged in Congress in which such important and vital interests of the Republic are involved.

Before the adoption of the Constitution there was a clear conception of the necessity of a federal jurisdiction in cases of diverse citizenship. It was then realized that there must be a forum to which the citizens of one state could resort in enforcing claims against citizens of another state with assurance of a fair and impartial decision, free from local bias and prejudice. The basic idea of a union of states and the symmetrical development of that union into a strong nation, included a federal judiciary that would occupy in certain respects a paramount position as compared with the courts of the several states. The old confederacy was recognized as a colossal failure. It had no executive power, no judicial power, and its legislative power was limited very largely to power to enact, but with no power to enforce.

The experience of the colonies under the Articles of Confederation taught them that there must be in their organic law, executive power, legislative power and judicial power, and in that way only could a nation be created and the jealous, quarrelling, big and little states, governed. They wanted no weak and flimsy fabric, no scrap of paper; no pile of sand blown hither and yon by every wind of passion—a conglomerate, soluble in hot water. They were through with a government that could only make an impotent gesture and demanded a *government with power*. With this object in view, sovereign states freely granted all needed power to a federal union, thereby demonstrating that they were capable of self-government and could sacrifice local self-interest for the general welfare. In their vision of a union, one and inseparable, they hoped to provide in their organic law for a real government, not a conglomerate like the Articles of Confederation, but a block of granite against which sectionalism, racial hatred, religious controversies, local prejudices, party rivalries, jealousies and ambitions might beat in vain. Strength, stability, firmness and durability was their hope, for they were adopting a constitution for the people of a nation as well as the citizens of each of the sovereign states. In granting almost imperial powers to their government, the people, confident in their ability to govern themselves, went farther than any free people had previously dared to go. In planning this great undertaking it was realized that the welfare of the Republic could not be promoted by subjecting the citizens of one state to the jurisdiction of another, and hence the diverse citizenship clause of the Constitution was adopted to prevent any just cause of complaint in the administration of justice.

This safeguard against bias and prejudice has been a large element in the development of our national life. The history of our country for one hundred and forty years demonstrates its value and the necessity for its preservation. The Utopian idea that human nature has changed since the adoption of the federal constitution and that local prejudice and bias has disappeared in a general scheme of altruism is a delightful dream, but false in fact. The lawyers who are familiar with the diverse citizenship jurisdiction are insistent upon its retention. The sponsors of the legislation attempting to destroy it by that attempt demonstrate the existence of the very sectionalism and bias which they deny, and charge the lawyers of the American Bar Association with selfish motives as the representatives of wealthy corporations and clients. The lawyers have no ax to grind. They can and do practise in both the state and federal courts and fees are not determined by the forum in which the service is performed. Very few of them are the legal representatives of great corporations. Many of them do not have wealthy clients and are not wealthy themselves. In the great majority of cases the members of the American Bar Association are practising lawyers, maintaining in the various courts of the country the supremacy of the law and demonstrating that this is a land governed by law. During all the years of our national life, the legal profession has been one of the most powerful influences in the realization of our ideals of liberty, not bounded and circumscribed by state lines, but with a broad and liberal vision its members have included the welfare of the nation.

The burden of establishing such a vital change in the organic law is upon the advocates of the proposed legislation and very briefly the reasons assigned by them will be noticed.

First: It is suggested that destroying the diverse citizenship jurisdiction would relieve the dockets of the federal courts and save the expense of additional judges, clerks, etc. This suggestion betrays an interest in the welfare of the federal courts which is truly surprising when we realize that, with the possible exception of the Supreme Court of the United States, the complete elimination of all federal courts is considered by them highly desirable. It is claimed that one-third of the business of the federal district courts arises from removals from state courts and that leaving this business in the state courts would relieve the dockets of the federal courts. The federal district courts are carrying a larger volume of business than formerly by reason of the Volstead Act which has made them police courts to try liquor cases and the net result of refusal to remove the diverse citizenship cases would give more time to the federal district courts to try liquor cases. We are not in favor of crowding out a jurisdiction that has been exercised for one hundred and forty years by any such process.

It is claimed by those who would repeal the diverse citizenship clause that a third of the busi-

ness, or to be exact, 27.7%, of the business of the federal district courts is made up of removals under the diverse citizenship clause. If this is true it would seem that a very large proportion of litigants considered the federal jurisdiction preferable to that of the state in many cases, and the percentage of removals confirms the thought that the fear of bias and prejudice in the state courts is still paramount in the minds of many litigants.

The clogged condition of the state courts is forgotten for the moment but the retention of this large amount of business in the state courts would certainly increase their burdens and still further increase the expense of the administration of justice in the states, and the taxes of the citizens of the various states would be correspondingly increased, whereas, the expense of maintaining the federal courts is borne by the federal government. The congested dockets of the state courts constitute the crying evil of our time, for justice delayed is justice denied. Every student of the administration of justice is giving his most careful attention to ways and means to avoid such delays in the state courts. Under present conditions it is generally true that a speedier trial can be had in the federal courts than in the state courts.

Second: It is suggested that today "bias and prejudice have vanished and the citizen of one state gets equal and exact justice in every other state; that a citizen of Maryland gets justice in the courts of the state of Virginia; and that a citizen of the state of New Jersey gets justice in the courts of the state of New York." Of course, if the citizen of Maryland believed he would get justice in the courts of Virginia and the citizen of New Jersey believed he would get justice in the courts of New York, that citizen would be the very last person in the world to remove his case to a federal court. In fact, there are innumerable cases disposed of in the state courts with no thought of removal, although the right exists. It is only where fear is entertained of bias and prejudice that the cases are removed. It is claimed that "A citizen of Iowa doing business in Nebraska has the privilege under present laws to remove the case from the Nebraska court to the federal court. A privilege not accorded in that case to a citizen of Nebraska." The fallacy contained in this illustration is at once apparent when we state the converse of the situation, and a citizen of Nebraska is doing business in the state of Iowa and sued in the Iowa courts. The downtrodden citizen of Nebraska then has the same right that the citizen of Iowa had in the state of Nebraska. It is safe to say that every state in the Union, in order to guard against local bias and local prejudice, provides for a change of venue from one county to another, or from one judicial district to another, in the same state in order to insure a fair and impartial trial, and the General Code of Nebraska, Section 20-410, is as follows:

> "In all cases in which it shall be made to appear to the court that a fair and impartial trial cannot be had in the county where the suit is pending, or when the judge is interested, or has been of counsel in the case or subject matter thereof, or is related to either of the parties, or otherwise disqualified to sit, the court may, on application of either party, change the place of trial to some adjoining county wherein such impartial trial can be had, but if it be against all the counties in the district then to the nearest county in an adjoining district."

If bias and prejudice has vanished as between states, it would seem that it must have vanished as between counties in the same state. Nevertheless, the statutes are still in force carefully guarding the rights of citizens against bias and prejudice between counties and districts in the same state. The fact of the matter is that we cannot limit our discussion to counties, localities or states, but must take a national view of the diverse citizenship clause of the federal constitution in discussing the question of rights thereunder, and it is fallacious and illogical to take an isolated case and speak of privilege in connection therewith without considering the converse of the proposition and recognizing the fact that every citizen of the United States, without discrimination, is entitled to appeal to the federal jurisdiction when he comes within the purview of this constitutional guaranty.

Third: An attempt is made to appeal to prejudice against the federal courts by suggesting that only the wealthy corporations and the wealthy lawyers are opposing this change, that attorney fees and expenses are usually higher in the federal courts, carrying with these suggestions the assumption that the proponents of the legislation are endeavoring to help the poor litigant and the poor corporation. The disadvantages of the poor litigant as against the wealthy corporations or the rich litigant are often cited with reference to procedure and litigation in the state courts and they are there urged with as much sincerity but for other purposes. The fact of the matter is that expenses are not higher in the federal courts. Court costs are not higher in the federal courts and attorney fees are fixed by arrangement with the client and not by the court, as everyone knows. The dragging in of the wealthy corporation, or the rich individual, as attempting to compel or wear out the poor litigant to settle for an insufficient amount or to accept an unjust judgment because he is unable to follow through the federal courts to the Supreme Court of the United States, is a splendid illustration of the kind of an argument that would be presented in some state courts where a wealthy corporation or a wealthy individual was a non-resident attempting to enforce his rights. The argument does not stand analysis, for whatever advantage wealth may get from the law's delays, that advantage can be had by dragging the poor litigant through all the state courts and finally to the Supreme Court of the United States, a much longer route by far. The laws delays and appeals or error proceedings are just as expensive and take just as much or more time in the state courts. The marshalling of the rich and the poor into opposing classes, the wealthy corporation and the poor litigant, and then claiming that the privilege is extended to the rich and not to the poor, is an appeal which we would not expect to be made by the advocates of this legislation for the right is impartially extended to every citizen, rich or poor, who brings himself within the terms of the constitutional grant.

Fourth: It is suggested that the diverse citizenship clause of the federal constitution permitting removal of controversies involving more than $3,000 makes property rights more valuable than human rights, and this is illustrated as follows: If a citizen of one state crosses the line and commits a murder in another state, he cannot take advantage of the diverse citizenship clause of the federal constitution and have the case removed to the federal

court. This suggestion treats the federal court almost as an asylum to which a murderer might flee for safety, like the old cities of refuge, when as a matter of fact the last place in this country to which the murderer would flee or take his case is the federal court. This suggestion, however, is an attack upon other articles of the federal constitution, and instead of criticising the diverse citizenship clause, it criticises Art. 3, Sec. 2, par. 3, wherein it provides:

"The trial of all cases . . . shall be held in the state where the crime shall have been committed. . . ."

The venue is, therefore, laid in the state where the crime is committed regardless of the citizenship of the murderer. The suggestion further criticises the extradition clause in the federal constitution, Art. 4, Sec. 2, par. 3, which provides:

"A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

These clauses and others in the federal constitution make the right to life more important than any other known to the law and provide that life, liberty and property shall not be taken without due process of law. Human and property rights are not adverse. Human rights include all, life, liberty, property, and as some of our state constitutions have it, "the pursuit of happiness," all interwoven and bound together. It should be noted that the effort to protect the murderer loses sight of any value that might be assigned to the life of the murdered man, or the loss to his family by reason of his death, and all this to get an opportunity to invoke a prejudice against property. The fact is that the diverse citizenship clause of the federal constitution is not involved in this murder illustration. The law of the sovereign state has been broken. A crime has been committed within the jurisdiction of this sovereign state and the controversy is between the sovereign state and the murderer. The venue of the crime is the place where it is committed, and under the federal and state constitutions and under the common law of England and under the federal statutes this has always been the venue for the trial of crime.

Fifth: It is suggested that in order to get the benefit of the diverse citizenship clause corporations sometimes incorporate in a state other than the one where they are doing business and then remove the case to the federal court, and this is spoken of as an abuse of the diverse citizenship clause. The abuse being in the intentional avoiding of the jurisdiction in the state courts and obtaining jurisdiction in the federal courts. It is not contended that exact justice may not be done in the federal courts to the parties, but it is insisted that it is an abuse to escape the state law, disadvantageous to it, by a removal to the federal court. The Taxi Cab Co., (276 U. S. 518) case is referred to as illustrating this terrible abuse. In order to avoid the application of a Kentucky statute, the Brown & Yellow Taxi Co., a Kentucky corporation, abandoned its Kentucky charter and incorporated under the laws of the state of Tennessee and was thereby enabled to invoke the federal jurisdiction and avoid the operation of a Kentucky statute. Without going into the merits of the case, it might be possible that the Kentucky statute was enacted by the Kentucky Legislature for the express purpose of putting the Taxi Cab Co. out of business.

They had a right to incorporate wherever they pleased, in compliance with the laws of the sovereign state and obtain thereby under the constitution access to the federal courts. Every statement that we have seen has called attention to this case as an argument for the destruction of federal jurisdiction in diverse citizenship cases. If it is an abuse to escape hostile legislation in a state by invoking federal jurisdiction, what can be said of those numerous cases where, in order to retain the state jurisdiction, litigants time without number reduce the amount of their claims below the jurisdictional amount for removal to the federal court? That is to say, bring an action in the state court for $2,999, just under the $3,000 limit. Why is this not called an abuse?

The law is taken advantage of in order to prevent the removal to the federal court, the object and purpose being to hold the case in the state court and try the case to friends and neighbors on the jury before an elected judge.

Apparently this sort of action is considered highly commendable when it is resorted to in order to retain a local jurisdiction and escape the federal jurisdiction. If it is an abuse to take advantage of existing law to get into the federal court, why is it not just as much of an abuse to take advantage of existing law to keep out of the federal court? As a matter of fact, corporations do not select the state of incorporation with any reference to the transfer of cases to the federal courts. Some states confer greater powers than others upon corporations with reference to the method of organization, the holding of meetings, the franchise tax levied and the reports required, and many other advantages determine the place of incorporation, and seldom, if ever, is consideration given to the right of removal to federal courts. Suffice it to say, that if corporations or anyone else abuse the right intended to be conferred by the constitution, eliminate the abuse but preserve the right.

Sixth: It is suggested that while the diverse citizenship clause of the federal constitution may have been instrumental in inducing capital to invest in the western and southern states, on the whole this has been detrimental to these sections, and that the ease with which these sections were able to borrow eastern capital has been a detriment to the borrowers. Why any such idea should be advanced as a reason for the repeal of the diverse citizenship clause of the federal constitution is hard to discover and whenever such an argument is advanced you will find repudiation just around the corner. It might be suggested that the person who loaned the money had also suffered a considerable detriment, notwithstanding his ability to resort to the federal courts. The people of these various communities were generally quite anxious to borrow the money; their country was developed by reason of these loans. Millions and millions of dollars of eastern capital were invested in local enterprises and loaned on property, the values of which were inflated for the purpose of borrowing as much money as possible. Over-borrowing on the part of these communities certainly cannot be laid to the federal constitution and their failure to pay their loans is certainly not a reason for the repeal of the diverse

citizenship clause. The illustration of the difficulties of the borrower, however, might be carried farther and present to us the sad spectacle of an eastern capitalist trying to win a case in one of these communities, before a jury of borrowers and before a court elected by the borrowers.

Seventh: In support of the constitutionality of this legislation *Kline vs. Burke Construction Co.,* 260 U. S. 226, is cited by its advocates. This case was decided Nov. 20th, 1922, while the *Terral* case *supra* was decided Feb. 27th, 1922. Of course, the *Kline* case does not overrule the *Terral* case, as they are not in conflict. That part of the opinion in *Kline vs. Burke,* which comments upon the power of Congress to confer jurisdiction upon inferior courts is purely obiter and is almost a quotation from the constitution itself. There is no discussion in *Kline vs. Burke* as to the duty of Congress to confer jurisdiction in compliance with the constitutional mandate on inferior courts. The command to confer upon such courts jurisdictions in controversies between citizens of different states is an imperative command which Congress cannot and has not refused to obey. In *Kline vs. Burke* the court is speaking of absolute power and the reasonable exercise thereof. Congress has power to lay and collect taxes, duties, imports and excises, pay the debts, provide for the common defense and the general welfare of the United States, but it might refuse to do so. Congress has the power to borrow money on the credit of the United States, but it might refuse to do so. To coin money, but it might refuse to do so. To establish post offices and post roads, but it might refuse to do so. To constitute tribunals inferior to the Supreme Court of the United States, but it might refuse to do so. A grant of power carries with it by implication the underlying condition that it will be reasonably exercised to accomplish the purpose for which it was granted. The refusal of Congress to legislate in compliance with constitutional commands and to exercise the powers granted to it in order to maintain the government of the United States in the full exercise of all its legislative, executive and judicial powers, would be unconstitutional or anti-constitutional, whichever you choose.

Eighth: It is suggested that the Congress has the power to destroy federal jurisdiction in cases of diverse citizenship because in the first judiciary act of 1789 $500 was fixed as a jurisdictional limit to the exercise of this right and the right to limit its exercise carries with it the power to destroy. No difficulty whatever arises in connection with this phase of the matter. Art. 3, Sec. 2, par. 2, provides that:

"In all other cases the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Mr. Justice Story in *Martin vs. Hunter's Lessee,* 1 Wheaton 349, says:

"This power of removal is not to be found in express terms in any part of the Constitution; if it is given, it is only given by implication, as a power necessary and proper to carry into effect some express power. The power of removal is certainly not, in strictness of language an exercise of original jurisdiction; it presupposes an exercise of original jurisdiction to have attached elsewhere. The existence of this power of removal is familiar in courts acting according to the course of the common law in criminal as well as civil cases, and it is exercised before as well as after judgment. But this is always deemed in both cases an exercise of appellate and not of original jurisdiction. If, then, the right of removal be included in the appellate jurisdiction, it is only because it is one mode of exercising that power, and as Congress is not limited by the Constitution to any particular mode, or time of exercising it, it may authorize a removal either before or after judgment. The time, the process and the manner, must be subject to its absolute legislative control."

Removal then, is a part of the appellate jurisdiction and the Congress has the power to make such regulation as it may think advisable with reference to the exercise of this appellate jurisdiction, but nowhere do we find any power in Congress to destroy this appellate jurisdiction. Under this construction no question has ever arisen as to the power of Congress to make certain regulations governing and controlling the appellate jurisdiction and the original $500 limit, now $3,000, has been considered a reasonable limitation upon the exercise of the right of removal.

It is contended that it would be perfectly constitutional for Congress to pass an act which would abolish every federal court in existence except the Supreme Court, which may be true, speaking of absolute power, and it is within the power of Congress to add to the jurisdiction within the limits of the constitution. The matter is more plainly stated in *Kline vs. Burke,* supra, where in speaking of the power of Congress, it is said, "that body may give, withhold, or restrict, such jurisdiction at its discretion, *provided it be not extended beyond the boundaries fixed by the Constitution.*"

In *Turner vs. Bank of America,* 4 Dallas 8, Mr. Justice Chase is quoted, saying, "The political truth is, that the disposal of the judicial power, *except in a few specified instances,* belongs to Congress." The contention that the present legislation is constitutional always runs up against the "boundaries" fixed by the constitution, or "in the specified instances," in the constitution. Beyond these limits and outside of these specified instances the power of Congress to create inferior courts and confer jurisdiction upon them, nobody questions. To contend, however, that because a limit of $500 was fixed as the necessary amount for removal in controversies between citizens of different states and has never been questioned, the constitutionality of the instant legislation which would destroy absolutely federal jurisdiction in cases of diverse citizenship is thereby established, is straining at a gnat and swallowing a camel. Reasonable regulation to protect the federal courts from being overwhelmed by an enormous amount of litigation was within the power of Congress under the appellate jurisdiction and this power has never been questioned down to the present time.

We have now discussed the first, second and third forms of attack on the diverse citizenship jurisdiction and the fourth still remains to be considered. This form of attack is illustrated by S. 3243 which deprives the federal district courts of power to interfere by injunction, or otherwise, with the orders of state public utility boards. The Judiciary Committee of the Senate has reported favorably S. 3243, which, if enacted into law, would accomplish the purposes above indicated. S. 3243 hopes to make the decisions of the state public utility boards final by denying the federal courts power to determine *de novo* the fundamental and jurisdictional facts involved in the litigation in order to ascertain whether the judicial power of the

United States shall extend to such cases. The recent case of *Crowell vs, Benson*, reported in Advance Opinions, U. S. S. C. No. 8, page 369, (76 L. Ed. 369) decided February 23rd, 1932 had under consideration the question of whether an act making the decision of the deputy commissioner in proceedings for an award of compensation under the Longshoresmen's and Harbor Workers' Act might be reviewed by the court, notwithstanding the provisions of the act that the award of the deputy commissioner should be final. In affirming the Fifth Circuit Court of Appeals, it also approved the decision of The District Court, while several Circuit Courts of Appeals and a number of District Courts had decided to the contrary. It sustained an act of Congress only by construing it to mean that the judicial power should extend to all cases in admiralty and that the jurisdiction to try such cases extended to the facts as well as the law. The diversity of citizenship clause of the federal constitution is found in the same section and paragraph as the clause relating to admiralty jurisdiction. The decision in the *Benson* case seems to us to be controlling and denies the power of Congress to limit the jurisdiction of the federal courts to inquire *de novo* as to the legality of the findings of administrative boards. The court holds in Syllabus 11:

"Judicial determination *de novo* of the fundamental and jurisdictional facts of the existence of the relation of master and servant and the occurrence of injury upon the navigable waters of the United States, essential to the validity of an award of compensation under the Longshoremen's and Harbor Workers' Act, is not precluded by the provisions of such act for the determination of questions of fact by administrative boards."

Under Headnote 11, Mr. Chief Justice Hughes, says, with reference to the previous discussion:

"What has been said thus far relates to the determination of claims of employees within the purview of the Act. A different question is presented where the determinations of fact are 'fundamental,' or 'jurisdictional,' in the sense that their existence is a condition precedent to the operation of the statutory scheme. These fundamental requirements are that the injury occurs upon the navigable waters of the United States and that the relation of master and servant exists. These conditions are indispensable to the application of the statute, not only because the Congress has so provided explicitly, but also because the power of Congress to enact the legislation turns upon the existence of these conditions."

And on page 382, the court continues the discussion, as follows:

"In relation to these basic facts, the question is not the ordinary one as to the propriety of provision for administrative determinations. Nor have we simply the question of due process in relation to notice and hearing. *It is rather a question of the appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions. It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency, in this instance a single deputy commissioner, for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend.* The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use, and *that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the Executive Department. That would be to sap the judicial power as it exists under the Federal Constitution and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the fact, and finality as to facts becomes in effect finality in law.*"

The court in discussing the question as to what weight should be given to the proceedings of the deputy commissioner by the court, on page 387, says:

"If the court finds that the facts existed which gave the deputy commissioner jurisdiction to pass upon the claim for compensation, the injunction will be denied in so far as these fundamental questions are concerned; if, on the contrary, the court is satisfied that the deputy commissioner had no jurisdiction of the proceedings before him, that determination will deprive them of their effectiveness for any purpose. We think that the essential independence of the exercise of the judicial power of the United States in the enforcement of constitutional rights requires that the Federal court should determine such an issue upon its own record and the facts elicited before it."

(Mr. Justice Brandeis dissented, and Mr. Justice Roberts and Mr. Justice Stone concurred in the dissenting opinion.)

Without quoting further from this elaborate and well considered opinion, we are relying upon it as an authority that the judicial power expressly extended to controversies between citizens of different states, cannot be "sapped" and destroyed by the process of "a little here and a little there," and that the doctrine of the *Benson* case applies to state boards as well as administrative boards created by Congress.

We have now examined the forms of attack on the diverse citizenship clause and commented upon all of the reasons which have come to our attention in favor of the legislation doing away with the federal jurisdiction in such cases, and we do not believe that the advocates of this legislation have made their case by anything like a preponderance or successfully carried the burden that is upon them of demonstrating the constitutionality, the advisability, the desirability of making such a radical change in our fundamental law.

The American Bar Association, the only organization that can speak with authority for the lawyers of this country, has year after year adopted the reports of its Committees recommending and ordering opposition to all legislation radically limiting the jurisdiction of the federal courts or decreasing the power thereof. In obedience to these instructions the Association has opposed the enactment of all legislation intended to destroy or impair

A Jurisdiction ordered by the Constitution—

A Jurisdiction provided immediately by Congress in obedience to the constitutional command—

A Jurisdiction enduring for one hundred and forty years and recognized as a part of the organic law by our people—

A Jurisdiction free from bias and prejudice—

A Jurisdiction where law reigns and from which other influences are banished.

Such a jurisdiction wisely provided by the fathers, carefully guarded and maintained through the intervening years, the lawyers of the country speaking through the American Bar Association earnestly and sincerely believe should be preserved.

Signed Articles

As one object of the American Bar Association Journal is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this Journal assume no responsibility for the opinions in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

WHAT AID CAN THE BAR RENDER IN THE SELECTION OF JUDGES?

Public Ignorance of Qualifications of Judicial Candidates Creates Inviting Situation for Scheming Politicians—Duty of the Bar to Place Its Estimate of Relative Merits of Such Candidates before the People — Extent to Which This Work Has Been Undertaken by Various Associations—Methods Employed*

By Luther Ely Smith
Member of the St. Louis Bar

IN former times when judges were appointed by the executive, or selected by the legislature, the general public could exercise little or no voice in the choice of judges. It has come about, however, that judges are now nominated and elected in most of the states by popular vote. Furthermore, they are, in most jurisdictions, nominated at party primaries and they appear on the ballots of political parties that are, or at least are supposed to be, in deadly combat on the great issues of national economic and fiscal policy.

It is a highly deplorable situation, unfortunate for the judicial candidate, for the members of the bar and for the uninformed member of the general public.

Judges are selected to try causes. Neither the litigant nor his counsel has the slightest concern with the views of the judge who presides at the trial on the tariff or any other national issue.

"Is he fair and fearless? Does he know the law? Will he try the case competently?" Answer those questions in the affirmative, and counsel and client will raise no question as to his national politics, if any.

But, in the words of President Cleveland, "It is a condition and not a theory that confronts us." The electorate of the various states has given us the present system of judicial nominations and elections. The general public, at best bewildered with the long ballot, is completely at sea when it comes to judicial candidates. Such a situation is an inviting one for scheming politicians. It is by no means without its appeal to the less scrupulous members of our profession.

An interesting story comes from the Acadian country, in Southern Louisiana. A certain justice of the peace announced his candidacy for the office of circuit judge. A prominent citizen, hearing of his candidacy, said to him, "Jacques, is it true that you are going to run for circuit judge? Don't you know that you haven't any qualifications for circuit judge?" The J. P., quite unabashed, replied: "Ah, M'sieur, you mistak', you mistak'!! It is not ze qualificac-i-ón that maka ze judge! It is ze vote of ze peep'!"

It is quite true that the average voter has no knowledge of the qualifications of the various candidates for the bench. He has heard little and knows nothing of their merits. How *can* he cast an intelligent ballot?

The answer is clear. Unaided, he cannot possibly exercise an intelligent judgment.

It is a realization of this situation that has caused the Bar Associations of our cities and states to feel that in view of the contact which the members of the profession have with bench and bar and the knowledge which they possess or can secure, they owe a duty to give the public the benefit of their estimate of the qualifications and relative merits of the candidates for judgeships.

In connection with the revision of the Rules on Judicial Referenda in the Bar Association of St. Louis, it fell to my lot as chairman of the Committee on Judicial Nominations to direct an investigation as to the extent to which other associations had undertaken this work and as to the character of the methods employed. The cordial cooperation of the officers of the Bar Associations addressed in connection with this investigation, was most generously extended and is gratefully acknowledged.

Correspondence with bar associations in the cities of the country having more than 200,000 population reveals that in thirty-three of these, comprising more than eighty-five per cent of those reporting, plans have either been adopted or are under consideration, or steps are being considered, for the purpose of giving to the voter or the appointing power charged with the duty of selecting judges, the benefit of the views of members of the bar upon the qualifications of judicial candidates. In twenty-eight cities, namely, Chicago, Cleveland, Cincinnati, Richmond, Baltimore, Philadelphia, Akron, Columbus, Minneapolis, San Francisco, Los Angeles, Indianapolis, New York, Milwaukee, Toledo, Denver, Pittsburgh, Brooklyn, New Orleans, Detroit, Memphis, Rochester, Birmingham, Boston, Omaha, Portland, Providence and Oakland, definite plans have already been adopted. It also developed that many of the state bar associations are actively engaged along the same lines.

Steps are being taken or are under consideration in Newark, Louisville, Dallas, St. Paul and Buffalo looking to the same end. Apparently, the movement has not yet taken shape in San Antonio, Dayton, Houston, Jersey City, Kansas City or Syracuse. (In Washington, D. C., the judges of the courts of the District of Columbia are appointed by

*Address before the Louisville (Ky.) Bar Association, May 20, 1932.

the President, subject to confirmation by the Senate.)

There is a wide variance in procedure and practice among the various cities.

Bar referenda for the purpose of expressing to the Governor the views of the profession are held by the associations of St. Louis, Minneapolis, Toledo, Los Angeles, Pittsburgh, Columbus and Milwaukee, in cases where vacancies occur which are to be filled by appointment.

In most of the cities a vote of the members of the Bar Association is taken to ascertain the views of lawyers upon the qualifications of candidates for judgeships to be voted on at the polls.

In Seattle the referendum system has been approved by the Bar Association and a plan has been adopted, but has not yet been put into practice.

In New Orleans the Executive Committee of the Association is clothed with the power of recommending judicial candidates for election, and has occasionally exercised that power.

Biographical sketches of candidates are published and sent out to the members of the Association, together with the ballot, in San Francisco, Chicago, Cincinnati, St. Louis and Cleveland.

In some of the Associations the membership of the Association is canvassed well in advance of the last day provided by statute for filing for the office of judge, in order to bring to the attention of the bar the importance of securing qualified candidates. A preliminary primary for the purpose of securing desirable candidates is provided for under the Seattle plan.

Questionnaires asking for detailed information on points tending to show the qualification of candidates are addressed to members of the Association in advance of the bar referendum in Chicago, Cincinnati and Cleveland and under the Louisiana State Plan. The data obtained by these questionnaires is carefully tabulated, and the results are summarized and published in bulletin form, together with the recommendations, if any, of the Committee, and sent to the membership for their information, together with the ballot containing the names of the candidates to be voted on. Photographs of candidates are published in connection with this bulletin in Cleveland, St. Louis and Chicago.

In Chicago in anticipation of the 1932 election, when twelve vacancies are to be filled, the Bar Association Committee issued on November 19, 1931, a year before the election and five months before the Illinois State Primary, a questionnaire to the members of the Association asking for detailed information as to the twelve incumbents, who presumably would be candidates for re-election. The letter accompanying the questionnaire in part stated:

"Please give the subject of this letter your careful and immediate attention. Your action thereon involves an important privilege and a high professional duty.

"It has long been one of the first principles of the ethics of our profession that lawyers should aid in every possible way in the selection of good judges to administer justice in our courts.

"In large communities the collective judgment of lawyers as to the qualifications of candidates for judge, when expressed through their bar associations, has come to be generally regarded as an informed and reliable opinion to be followed by voters.

"The Board of Managers and the Committee on Candidates have issued the following questionnaire in the interest of accuracy in the judgment of our Association on the qualifications of the candidates (the twelve incumbent judges whose terms were about to expire) whose names appear therein, to the end that a vigorous judgment may be expressed concerning their judicial service and a sharper cleavage defined between the fit and the unfit. This questionnaire is not a substitute for the bar primary which will be held in due course. It is advisory to the Board of Managers and the Committee on Candidates, by whom the replies will be regarded as confidential information.

"It is realized that time is required to mark the questionnaire, but no more important professional matter will come to you. Please mark and return it within three days. Separate comment on the individual candidates may be enclosed with the questionnaire and is invited."

A questionnaire to candidates is issued by the Committee in Cleveland and Cincinnati.

In Cincinnati the majority preferential plan of voting is employed. In Chicago no candidate is endorsed who does not poll at least one-third of the votes cast. In San Francisco members vote for one candidate for each vacancy, but they may also vote *against* candidates, and a candidate to be endorsed must receive a vote of at least one-fourth of the total membership of the Association, but he will still fail of endorsement if forty per cent of those voting should vote against him. In Akron a majority of those voting is necessary to endorsement. In most of the cities a plurality vote is sufficient. Thus, if there are six vacancies to be filled and twenty candidates, the highest six are endorsed.

Solicitation of votes by members of the Association is frowned upon or forbidden in most of the Associations.

In Columbus, the following rule is in effect:

"No member of the association shall sign any petition recommending or endorsing any person to any judicial office; nor shall any member of the association on behalf of himself or another, circulate or cause to be circulated any such petition. Provided, however, it shall be permissible for any member of this association to sign a nominating petition in the event there are less than five signatures upon said nominating petition when the same is presented."

In Akron, at the time of balloting, each member is required to state in writing whether or not he will support the candidates endorsed by the Association.

Pledges are requested from candidates in Cincinnati that they will abide by the result of the referendum and that they will not before, during or after the referendum, encourage, countenance or permit campaigns to be organized in their behalf and that they will not conduct individual campaigns or solicit, receive or expend funds for that purpose.

In Cleveland, by the 1931 rules adopted by the Committee under the authorization of the Executive Committee, it was provided:

"That the existence of committees and the solicitation or receipt of funds for, or on behalf of, individual candidates for judicial office are strongly disapproved. The spirit as well as the letter should be observed. As a condition to having the name of any candidate submitted to a referendum vote of the Cleveland Bar Association, such candidate must give a pledge that such practice will not be permitted. Violation of the pledge in any respect by any candidate will automatically withdraw from such candidate all support of the Cleveland Bar Association.

"The appearance or the making of speeches before indiscriminate meetings is inconsistent with the dignity of one standing for judicial office. It would seem that the determination of what character of meeting should be attended or addressed should be left to the judgment of any person fit to hold such office if elected. However, the Committee reserves the right to withdraw, with the approval of the Executive Committee of the Cleveland Bar Association, any and every support of such Association from any candidate whose appearances or speeches are deemed improper by said Commitees."

In all the Associations ample precautions are provided for insuring complete secrecy in voting. The most extreme case as to secrecy seems to be

Cincinnati, where the large envelopes containing the members' signatures and their sealed ballots are received and checked and counted by one firm of public accountants, and the inner envelopes containing the ballots are then delivered to another firm of public accountants who open the envelopes containing the ballots and count, tabulate and certify the vote.

In Chicago a "Canvassing Committee" is appointed to canvass the votes in the Association referendum, while a "Candidates' Committee" conducts the questionnaire and issues the Report on Candidates for the information of the members in voting.

The circulation and filing of petitions by lawyers proposing candidates to be voted on at the bar primary are provided for in Pittsburgh and Milwaukee. In Milwaukee, such a petition may be filed by any three members of the bar, but no more than three may sign any one petition. In Brooklyn, Memphis, and Rochester, the entire bar of the county is invited to propose names of qualified candidates.

In San Francisco two separate and distinct committees are employed. The one committee is a Judicial Candidates' Committee, whose duty it is to endeavor to get fit candidates to file, to secure and publish data concerning candidates, and to see that the results are properly tabulated and published. The other committee is a Judicial Committee to conduct the campaign at the polls.

In Indianapolis there are two pre-primary referenda. These are held following the expiration of the time permitted candidates for filing for the State Primary. At the first, Democratic lawyers vote for Democratic candidates only, and Republicans for Republican candidates only, one for each vacancy. At the second primary, held a week after the first, the highest two candidates at the first primary are voted on for each vacancy, and every member voting *must* vote for one candidate for each party ticket.

In Denver, there are two and sometimes three referenda. At the first, names suggested by any member of the bar are voted on, and the highest ten or twelve are selected for the second. The aim is to eliminate at the first referendum about two-thirds of the candidates and have a comparatively small number to be voted on at the final referendum. If the number of candidates is very large, a third primary is held. No attention is paid to politics and the relative standing of the candidate as indicated by the votes received is not disclosed until the last ballot.

In connection with Richmond, it is to be noted that in Virginia judges are not selected at a general election but are appointed by the Legislature or by the Governor when the Legislature is not in session. The Richmond Bar Association, when a vacancy is to be filled, conducts a preferential vote at a meeting of the bar called for that purpose. Friends of each aspirant may name two tellers. A single nominating speech not over five minutes in length is permitted, and voting is by ballot signed by the voter. A majority vote is necessary for recommendation, and in the event that no one secures a majority on the first ballot, the candidate polling the lowest vote is dropped and the balloting is continued in like manner until a majority is secured. All participating in the meeting are pledged to lend their unqualified and active support to the candidate chosen.

In Memphis, when a vacancy is to be filled by election or appointment, a special meeting of the Bar Association of Memphis and Shelby County is called for the purpose of recommending a person qualified to fill the vacancy. A secret ballot is taken among those previously placed in nomination by petition. A majority is necessary for recommendation.

In Los Angeles under a new amendment adopted January 21, 1932 (7 Los Ang. Bar Bull. 197-201), the Committee is charged with the following duties:

"(1) To inform itself of prospective candidates, and the qualification of candidates, for the Superior Court of Los Angeles County, and the Municipal Court of the City of Los Angeles.

"(2) To induce lawyers qualified for these judicial offices to become candidates therefor.

"(3) As soon as the list of candidates for any election for any of the judicial offices mentioned shall have been determined by the filing of petitions or otherwise as the law may require, then:

"(a) To request from each candidate a biographical statement and a statement whether he will submit his candidacy to a plebiscite to be taken by the Los Angeles Bar Association. Such statements shall be in response to a questionnaire substantially in the form shown by Exhibit 'A' to this Article IX.

"(b) To verify, where in its judgment such verification is desirable, the statement of the candidate.

"(c) To transmit to each member of the Los Angeles Bar Association the substance of the said statement, with, if the facts do not tally with the candidate's statement, a statement of the facts found upon verification. If the candidate fails to furnish the biographical statement or to submit his candidacy to the plebiscite, the committee shall ascertain the facts as to his biography and qualifications and if the candidate be found by the committee not qualified for the office, report such facts and findings in said statement.

"(d) With such statement to transmit a questionnaire as to every candidate, substantially in the form shown on Exhibit 'B' to this Article IX, including a letter of transmittal substantially in the form of 'Exhibit C' thereto."

The Committee after tabulating the answers to the questionnaires, prepares a statement as to each candidate, with its recommendation, and transmits same, together with a ballot, to the members of the association, and makes public the result of the vote.

The Committee is further required:

"(4) To cause an active and widespread campaign in behalf of the candidates who receive the highest vote at the plebiscite for the offices for which they respectively are candidates; to take complete charge of the raising of money to conduct such campaign, and for such purposes at its discretion to appoint subcommittees of its own members or partly of its own members and partly of other lawyers and/or laymen."

In Toledo a majority vote is required for endorsement and if no candidate receives a majority on the first ballot for the vacancy under consideration, a second ballot is taken, but if no candidate receives a majority on this ballot, no further ballot is taken. A campaign committee is appointed with the authority to arrange and conduct a campaign in behalf of the bar endorsees under the supervision of the Executive Committee.

The Toledo by-laws further provide that:

"It is hereby declared to be the purpose of the Toledo Bar Association to furnish to the public and to the appointing power the benefit of the uninfluenced opinion and judgment of the Bar as to the qualifications of candidates for judicial office, and the Association does declare that every member of the Bar should, in recording his vote, act in a judicial spirit, free from all personal and partisan considerations, and should express his true convictions as to the fitness of the several candidates. To attain such result, this Association does declare that no member of the Bar ought, directly or indirectly, to solicit the support, endorsement or vote of members for himself or any other

person, in taking the ballot herein provided for. Any candidate violating this rule of conduct shall subject himself, at the discretion of the Executive Committee, to forfeiture of the endorsement and support of the Bar Association."

In Baltimore the by-laws require the President of the Association, whenever a judge is to be appointed to the United States District Court, or appointed or elected to any court in Baltimore City, or the Court of Appeals of Maryland in Baltimore City, to appoint a special committee of six members who investigate the character, ability, and general qualifications of each available person, and report their findings and recommendations to the President who shall thereupon publish such report, unless he shall deem it advisable to lay the report before a meeting of the Association.

Of two amendments changing this procedure voted on April 5, 1932, one prescribing in detail the methods to be followed by the Committee, was adopted; the other amendment providing for a vote by the Association upon candidates, was defeated.

In Philadelphia, the Association has for many years had a committee on judicial vacancies which, when vacancies to be filled by appointment occurred, would meet and canvass the available men and then recommend to the Governor usually three men from whom he would be requested to make his choice.

In October, 1931, the Philadelphia Association, in connection with the revision of its by-laws, provided for the election of a judiciary committee, one-third of its members to be elected each year for a period of three years.

The Committee is required, whenever a judge of the United States Courts for the Philadelphia district, or of the local courts, is to be appointed, immediately to notify the members of the Philadelphia Bar by publication that they will hold a meeting of the committee at a specified time and place for the purpose of considering names of candidates to be recommended to the appointing power, and that the names of suggested candidates will be received by it for consideration from any member of the Bar, if filed with it by a day certain prior to the meeting. The committee has the right to recommend to the appointing power such name or names as the committee in its judgment and discretion may select.

The committee has authority to take such action on behalf of the Association as it may deem necessary to influence proper selections for the bench at any primary or general election, and to this end, whenever it is deemed advisable by the committee, a Bar Association plebiscite may be held under the committee's supervision and in accordance with such rules and regulations as it may adopt.

Should the committee deem it advisable that the Association should actively support at the polls any candidate or candidates selected as the result of such a plebiscite, it has the right in the name and on behalf of the Association to enter into such engagements and undertake such activities as it may deem necessary for this purpose.

In New York, an active judiciary committee has been maintained by the Association of the Bar of the City of New York since 1898. The report of the committee of May 12, 1931 records the cordial cooperation of the Governor of the State and the Attorney General of the United States in the matter of appointments, and (to a large extent) of the political parties in connection with the nominations for judgeships.

New Jersey is one of the states where judges are appointed. The Chancellor, who is appointed by the Governor, appoints his vice-chancellors. In connection with Newark, the Essex County Bar Association at its last meeting on December 4, 1931, considered, among other revisions of its by-laws, an amendment giving the committee all rights with reference to ascertaining the fitness of candidates for appointment, recommendations of candidates, and the right to ascertain from the members of the Association or other members of the bar their choice or opinion as to the persons' qualifications.

While this particular amendment failed of passage, it created an effect, the Secretary of the Essex County Bar Association writes, that has been very good and in a year or so it is expected that such an amendment will be adopted.

In Birmingham all members of the bar in the county who have been licensed to practice for six months are entitled to vote, expressing their views on each candidate: "Is he qualified—Yes, or no," and also to vote for the best qualified for each vacancy.

Each member voting is requested to act in a judicial spirit, free from personal or partisan considerations, and not to solicit or request any other member to vote at the bar referendum for any judicial candidate. The view is expressed that no candidate should solicit, directly or indirectly, any votes.

In Massachusetts, the judges are appointed, but the Governor often calls on the President of the Boston Association to recommend a suitable person for a vacancy and the President makes such recommendation, after consultation with a standing committee known as the "Committee on Administration of Justice."

In Oregon, judicial nominations and elections are non-partisan. Both the State Bar Association and the Multnomah County Bar Association (which includes Portland) conduct referenda. The members of the bar voting may vote for only one candidate for each vacancy.

The Portland Committee in its letter sent to its members in April, 1932, said:

"Ability, industry, honesty, impartiality and character are the essential requisites of a good judge. The presence or the lack of these in the candidates for judicial office is better known to the lawyers than to the public at large. It is hoped by means of this vote to give to the electorate the benefit of the opinion of the bar as to the various judicial candidates, thereby aiding in the selection of the best qualified for our bench."

In Rochester last year a referendum was held by the bar for the first time. It was on the nomination for Justice of the Supreme Court for that district. Each member voting was asked to select ten Republicans and ten Democrats whom he thought best qualified for the office and was further cautioned:

"Do not omit any name because you think he would not accept. Assume that any lawyer will accept as a public duty."

A second referendum was then held to select five from each list, and the ten names so selected were certified, five to each party committee. Each party made its nomination from among the five so selected.

In May, 1932 Omaha for the first time adopted a referendum plan. In connection with the referendum each lawyer is requested to pledge that he

will actively support the candidates selected by the referendum, or, in the alternative, will not support a candidate not chosen by the referendum.

In Rhode Island the judges of the Superior Court are appointed by the Governor, with the consent of the Senate, while the judges of the Supreme Court are elected by the Grand Committee of both houses of the legislature. All judges serve during good behavior.

In Providence the matter is handled by the Rhode Island Bar Association, which through its committees has endeavored to co-operate with the Governor, the Legislature and the political leaders, with the result that it is felt that appointments, on the whole, have been excellent.

"Hon. John S. Murdock, elected two years ago to the Supreme Court, was at that time president of our Association (writes the Secretary) and it is our feeling that any man holding high office in this Association should be qualified for the bench. Of three appointments to the Superior Court by the Governor since that time, one was chairman of the Executive Committee of this Association at the time he was appointed, and one was a former chairman of that Committee and Vice-President of the Association at the time of his appointment."

In Oakland the subject of judicial referendum is handled by the Alameda County Bar Association. On February 24, 1932 an amendment to the by-laws of that Association was adopted, under which it was provided that if the Executive Committee of the Association, within fifteen days from the expiration date for the filing of nominations for judicial offices, does not determine that a vote of the members of the Association shall be had on an endorsement of candidates for all of the judicial offices to be filled, then at any time after the expiration of said period of fifteen days, and not later than forty days before the holding of the ensuing election, upon written petition or request therefor signed by at least twenty per cent of the members of the Association in good standing, a vote for endorsement of candidates shall be had among the members of the Association for which such request is filed. The election is by letter ballot and is secret. Among the provisions for the election is one requiring that sixty per cent of the total number of votes cast shall be necessary for endorsement. This provision is subject to modification where there are three or more candidates for one office.

In Minnesota judicial nominations are non-partisan. In Minneapolis the Association holds a referendum on judicial candidates at which a plurality is sufficient to secure endorsement.

In Duluth, a much smaller city, the Bar Association of the Eleventh Judicial District (which includes Duluth) has just adopted a system of judicial endorsements.

The Louisiana State Bar Association in May, 1932 approved the report of an able committee headed by Honorable Monte M. Lemann, of New Orleans, and adopted a thorough-going proceeding for taking a plebiscite of the bar of the state on judicial offices of state-wide scope. Preferential voting is provided for under the Louisiana state plan.

In Missouri the State Bar Association takes a referendum on candidates for the State Supreme Court and the three appellate courts.

In St. Louis, for a number of years prior to 1928, only one bar referendum was held and it was a partisan referendum. In those years Republican lawyers voted their choice among Republican candidates and Democratic lawyers among the Democratic candidates, after the last day for filing and in advance of the State Primary.

In 1928, and also in 1930, two referenda were employed. Under this plan, all lawyers voted for candidates on both party tickets at the pre-primary referendum in June. Again all voted at the pre-election referendum in September for a choice among those nominated by the voters at the State Primary in August. In each case, the member voted for the same number of candidates as there were vacancies to fill. Following the 1930 election there were vigorous complaints against certain features of the St. Louis system, and a movement was launched to go back to the single partisan referendum. After a careful reconsideration of the whole subject, the Bar Association of St. Louis on April 7, 1932 voted to continue the double referendum, and at the same time it adopted methods strengthening the procedure. (The preprimary referendum was held under the revised procedure June 15-24, 1932.)

The Bar Association of St. Louis in its rules has expressed its

"disapproval of candidates for judicial offices, personally or through friends, soliciting votes in furtherance of their interest in connection with the referendum. The highest vote should represent the free and untrammeled opinion of the members of the Bar Association and not be the result of pressure of any kind brought to bear upon any member of the Association. The sole aim of this bar primary is to serve the public by recommending the best available candidates."

In St. Louis the entire press has co-operated most effectively. Vigorous editorial support and news prominence of the highest value has followed the publication of the results of each Judicial Referendum. Reports from the other cities indicate that in general the newspapers of the country can safely be counted upon for enthusiastic and intelligent support, when the bar seriously tackles the problem of raising judicial standards.

In point of fact, while some uninformed opposition may be encountered, this is rarely if ever in the open. It may be safely asserted that in few, if any, of the cities or states has any person of standing in the community cared to take the responsibility of opposing so meritorious a movement.

If thoughtfully and wisely planned, it can hardly fail to achieve substantial success.

It is clear from a review of the activities of the bar associations of our larger cities and some of our states that the profession is keenly aroused to the necessity of lending every aid it can to the public in the selection of competent, fair and fearless judges.

An uninformed electorate can do little to remedy the situation. It is only fair to say that the more intelligent among party leaders and politicians are grateful to the bar for this movement. The rank and file of party followers have no interest in seeing incompetent or weak men on the bench. That course adds no prestige to their partisan banner. A strong stand by the bar in favor of selecting the most competent men for the bench, regardless of party label, will inevitably produce a most salutary effect upon party leaders and will go far toward enlisting their influence within their parties to the same end. Furthermore, it will tend to make the bench more attractive to the abler men in the profession. It will at the same time prove a step in

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WASHINGTON BICENTENNIAL ART EXHIBITION

Visitors to Annual Meeting of the American Bar Association in October Will Have Opportunity of Seeing a Notable Loan Exhibit of Portraits of Washington and Contemporary Figures—One Room Given over to Supreme Court Justices Appointed during Washington's Two Administrations

By L. Lowell Johnson
United States George Washington Bicentennial Commission

An art exhibition of more than passing interest is being shown in the city of Washington this year in connection with the nation-wide Bicentennial celebration of George Washington's birth. Held under the auspices of the United States George Washington Bicentennial Commission, this Historical Loan Exhibition has brought together for the first time many world famous portraits of the First President and his associates, painted from life by eminent American and European artists. The paintings have been collected from museums and individual owners in America and other countries who have made the exhibit possible by generously lending these priceless objects of art.

The exhibition, displayed in the Corcoran Gallery of Art, will be a point of interest for the members of the American Bar Association when they meet in the Capital next October, for one of the features of the exhibit is a collection of portraits of all the Supreme Court Justices appointed during Washington's two administrations. Of the four connecting rooms given over to the exhibition, one is entirely taken up with these judicial portraits. In this room the eyes of the men associated in life on the bench of our highest tribunal in the days of its beginning look down, from the canvas, upon the visitor to the gallery, or gaze past him as if still seeking the answer to some intricate judicial problem.

JOHN JAY
First Chief Justice United States Supreme Court.
Courtesy George Washington Bicentennial Commission.

The main features of the Bicentennial Exhibition are of course the portraits of George Washington, and there are some interesting facts regarding them which the prospective visitor will doubtless find of value.

Because there were no cameras in his day, George Washington was not called upon to face a battery of photographers every time he left his home or his office, as has been the case with the more recent of his successors in the Presidency; but it is doubtful if he were much better off than they. Curiosity as to the personal appearance of so great a man was as universal then as it is now, and Washington gave way before the pressure of friends and admirers to sit for at least eighteen different painters and two sculptors. A tedious experience it was, and Washington impatiently submitted to it at first; but it became so commonplace that later in life he jokingly wrote of his reduction to complete docility in the hands of the artist.

Photography, electrotyping and the allied processes by which portraits are now so rapidly duplicated, were then unknown, so when an artist made a good portrait of a well-known man he usually made several copies which he could sell at prices commensurate with his ability and fame. It has been estimated that 250 portraits of George Washington have been painted, including those made from life and replicas, by the original artists. These paintings were used by other artists who either copied them outright or drew their inspiration from them. Engravers also took up their tools to increase prodigiously the number of George Washington portraits which even then were scattered to all parts of the world.

The greatest number of portraits in the exhibition by any one artist are from the brush of Gilbert Stuart. No less than nine of his paintings of George Washington are shown, together with others, notably of John Jay and John Adams. Both

of these portraits are of exceptional workmanship and undoubtedly rank among Stuart's best.

The portrait of the first Chief Justice of the United States Supreme Court, John Jay, is the outstanding picture in the room set aside for that august body. Dressed in the black, scarlet and white-trimmed robes of his office, John Jay presents an imposing figure. The high, intellectual forehead, the sensitive nostrils, the firm mouth with its yet undeniably kind expression, all bespeak the character which inspired Daniel Webster to declare: "When the spotless ermine of the judicial robe fell on John Jay, it touched nothing less spotless than itself."

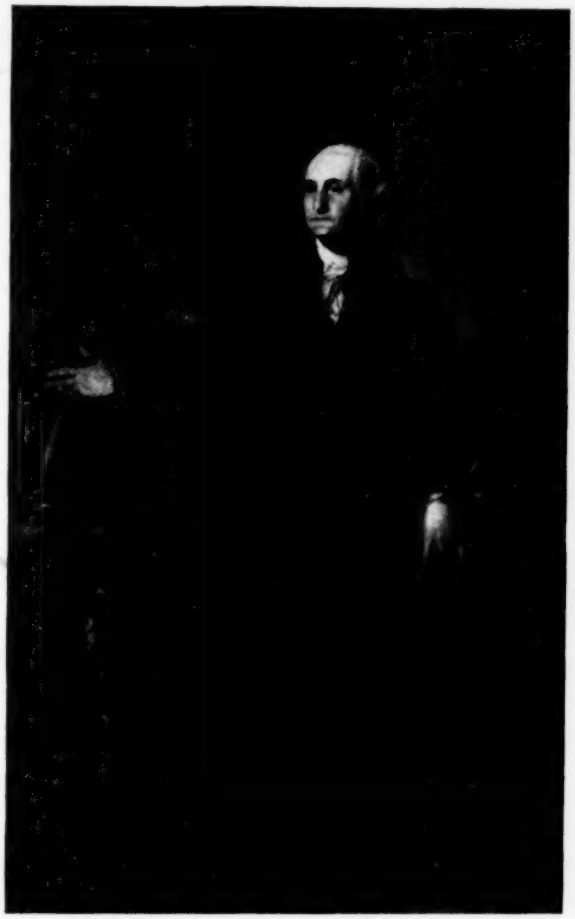
Testy, irascible, patriotic old John Adams was the subject of one of Stuart's other masterpieces. In this portrait the artist executed some of his finest work. The splendid brow, denoting the intelligence of the life-long patriot, the eyes, still undimmed by the nearly ninety stirring years they have seen speed by, and the tight-lipped mouth, tilted slightly at one corner, with the snowy hair bushing out at the sides, combine to make a picture which critics rank with the work of Raeburn, a past master of such a subject.

One of the reasons for Stuart's great success is revealed in the following statement John Adams made after the artist had painted this portrait. "Speaking generally," he said, "no penance is like having one's picture done. You must sit in a constrained and unnatural position, which is a trial to the temper. But I should like to sit to Stuart from the first of January to the last of December, for he lets me do just what I please and keeps me constantly amused by his conversation." The artist, by his wonderful powers of conversation, would call up different emotions in the face he was studying, and choosing the best or most characteristic, he would use it with the skill of a genius to animate the picture.

The portraits of Washington range from miniatures to the full-sized painting by Stuart known as the "Lansdowne Portrait," now owned by the Earl of Rosebery, London. His features look out from pastels, oils, crayon drawings and ink sketches. Heavy-lidded and somnolent looking in some, the Father of His Country is also shown with nearly every other expression on his face. One of the most interesting sketches in the collection was made in 1776 by John Trumbull on the head of a drum, said to have been done on the battlefield. It shows the figures of Washington, Colonel Henry Knox, and General Israel Putnam.

An interesting artist represented in the collection by some excellent portraits is Saint Memin, a Frenchman who traveled in this country making drawings of American notables. Saint Memin used a unique device known as the physiognotrace which enabled him to make accurate reproductions of a person's features. Done in crayon on pink paper, these drawings are indeed intriguing.

George Washington is pictured in military and in civil attire. He is shown in formal pose and is sketched informally in a landscape view of Mount Vernon by John Trumbull. An interesting study is afforded by Edward Savage's group picture of General and Mrs. Washington, Nellie Custis, George Washington Parke Custis, and Billy Lee, the colored serving man. The Potomac River in the background reminds one of Washington's great love for his beautiful estate on this placid stream.



Portrait by Gilbert Stuart. Known as the "Lansdowne Portrait." Photographed direct from the original. Present owner, Lord Rosebery, London.
Courtesy George Washington Bicentennial Commission.

The first portrait of Washington painted from life, by Charles Wilson Peale, is a striking exhibit of the collection. Made at Mount Vernon when Washington was 43 years old, it shows the future leader of America's armies in the uniform of a colonel of the Virginia militia. A three-quarters length painting, it is known as the "Virginia Colonel," and now belongs to Washington and Lee University at Lexington, Virginia.

Many critics give a high rating to the Washington portrait by Adolph Wertmuller, a Swedish artist of renown. But it must be admitted that the painter gave more attention to his subject's lacy jabot than to his expression, if other portraits are to be accepted as showing Washington's true appearance; for in no other painting does the Father of His Country wear the whimsical expression given him by Wertmuller. The artist's care in making this bit of masculine finery stand out may have been due to his experience with royalty and others in Europe where sartorial elegance was considerably stressed.

The portrait of kind-faced, benignant Benjamin Franklin represents one of the finest efforts of

Joseph Wright. This picture was painted after "Poor Richard" had established his fame as a philosopher. It impresses the viewer as showing exactly what the old gentleman must have looked like.

From philosophical old age the visitor turns to the fiery impetuosity of high-natured youth in the portrait of Alexander Hamilton by John Trumbull; and his heart must be stirred by this dashing picturization of the first Secretary of the United States Treasury. The imperious spirit, the courage and unflinching will that carried Hamilton through his turbulent career to the forefront as one of America's greatest statesman, and finally to death on the duelling grounds, all show in this striking portrait.

As mentioned above, the portrait of Chief Justice Jay is the outstanding painting in the room given over to the Supreme Court Justices. Keeping him company again are portraits of the members of the first Supreme Court; John Blair, by Leopold Seyffert; William Cushing, by James Sharples; Joseph Wilson, also by Seyffert; James Iredell, by Mrs. Marshall Williams; and John Rutledge by an unknown artist. Of these painters Seyffert and Mrs. Williams are contemporary.

The portraits of six other men who served as Justices of the United States Supreme Court are also to be seen in this room. Four of them, Thomas Johnson, William Paterson, Samuel Chase, and Oliver Ellsworth, were appointed by George Washington. The other two, John Marshall and Bushrod Washington are included in the exhibition because of their intimate association with George Washington and his period. Bushrod was the son of Washington's favorite brother, John Augustine, and he inherited Mount Vernon from his illustrious uncle. John Marshall's place in our history needs no enlargement, and the familiar portrait of the great lawyer by Robert Sully makes it not difficult to realize the strength of his character.

All in all, the Bicentennial Exhibition in the Corcoran Gallery of Art has brought together some of the finest portraits ever painted of George Washington and his associates. Many other famous men, not mentioned here, are represented in the collection. It is one of the very few projects of the United States George Washington Bicentennial Commission which from its very nature cannot be carried to the people; and no other project of the Commission is of such unique interest. For the first time it is possible to see in one collection many of the greatest historical paintings of the First President and the men who with him founded the United States.

THE RESEARCH IN INTERNATIONAL LAW*

By Henry S. Fraser
Member of Syracuse Bar; Member of Advisory Committee, The Research in International Law

IT is a truism of history that industrial and commercial relations of the world have advanced at a far more rapid rate than international law. Although law in general is expected to follow leisurely in the wake of progress in other fields, international law has been a particular offender in this respect. The reasons are not far to seek. The lack of a legislative body in the international field, comparable to a parliament or diet in the municipal field; the lack until recent years of a permanent international court holding regular sessions for the adjudication of disputes between Powers; the strong insistence upon the national point of view vis-a-vis the rest of the world;—all have militated for many years against the rapid growth of a coordinated body of international law.

The World War, however, and its long aftermath have brought a full realization of the delicate and complicated interdependence of all countries and the lack of definite legal rules by which the rights and duties of nations may be known. The founding of the League of Nations and of the Permanent Court of International Justice have further accentuated the necessity of a modernized system of international law. It has become apparent that the machine age cannot afford to await the slow evolution of an international law pricked out as was the common law of England. The world has a present need for certainty in international law, both in the fields where precedents, often conflicting, exist and in those fields where no precedents are found. Thus the value of codification as an immediate means of bringing nearer the desired certainty of law has been strongly urged.

For example, ships of one country often necessarily sail into the territorial waters of another, either when approaching the ports of such other country or when exercising the right of innocent passage. It is therefore important in order to avoid conflicts of interest that Norway, for instance, should not have widely different statutes from France respecting the extent of fishery rights, customs control, police regulation, etc. Or again, it is important that Englishmen contracting with the government of Venezuela shall know in advance to what extent the British government in their behalf may hold the government of Venezuela responsible in case of breach or repudiation on the latter's part. Or again, a Spaniard might wish to know whether a certificate of Brazilian naturalization could be impeached before a Chilean-Brazilian claims commission. Or, to cite a final example, an official delegate of Greece to an economic conference under the auspices of the International Labor Office at Geneva might desire to know to what extent he enjoyed diplomatic immunity.

This need for codification, extending not only to the restatement of existing law but also to the

*Under the auspices of the Harvard Law School.

formulation of new rules where modern necessities require, was pointed out to the First Assembly of the League by the Committee of Jurists that framed the statute of the World Court. Accordingly, in 1924, the Fifth Assembly requested the Council of the League to convene a committee of experts representing the principal legal systems of the world for the purpose of preparing a list of the subjects of international law which in their judgment were ripe for codification.

The Council acted upon the request and appointed such a committee, on which George W. Wickersham sat as the member from the United States. This Committee of Experts held four sessions at Geneva, the first in April, 1925, and the last in June, 1928, during which period the entire field of the international law of peace was surveyed.

At the close of its third session the Committee of Experts recommended seven subjects as sufficiently ripe for regulation by international action, as follows: (1) Nationality, (2) Territorial Waters, (3) Diplomatic Privileges and Immunities, (4) Responsibility of States, (5) Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties, (6) Piracy, and (7) Exploitation of the Products of the Sea. Two further subjects were also recommended at the close of the fourth session of the Committee, namely, Legal Position and Functions of Consuls, and Competence of Courts in regard to Foreign States.

As a result of the Committee's work, the Eighth Assembly in September, 1927, selected three subjects from the above list to be submitted to a First Conference for the Codification of International Law, at which conference an attempt was to be made to secure multilateral agreement from as many nations of the world as possible. The selected subjects were Nationality, Territorial Waters, and the Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners. With reference to the other topics recommended by the Committee of Experts, the Assembly concluded that the subject of Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties should be studied by the Secretariat of the League; that the subject of Exploitation of the Products of the Sea should be investigated by the Economic Committee of the League cooperating with the Permanent International Council for the Exploitation of the Sea at Copenhagen and any other organization specially interested in this matter; and that the subjects of Piracy and Diplomatic Privileges and Immunities should for the present be "left on one side." At a later session of the Assembly the subjects of Legal Position and Functions of Consuls, and Competence of Courts in regard to Foreign States were reserved with a view to subsequent conferences.

Shortly after the decision of the Eighth Assembly in September, 1927, to summon a general conference to take up the subjects of Nationality, Territorial Waters, and Responsibility of States, to which conference the United States was invited to send a delegation, a meeting of some thirty-five American jurists from many parts of the country was convoked at the Harvard Law School for the purpose of initiating a special program of research in the three branches of international law aforesaid. It was felt that an intensive and scientific study of these topics would be of value to the general conference called by the League, and would incidentally serve to equip the delegation from the United States.

Funds for the projected Research were made available through the generosity of various donors. Manley O. Hudson was appointed Director of the Research, and George W. Wickersham was named Chairman of the Advisory Committee, composed of the jurists who were to undertake the Research.[1] At the suggestion of the Chairman the scheme of organization and method of work of the American Law Institute were adopted, that is, a reporter was selected for each subject, assisted by a group of advisers chosen for the most part from the membership of the Advisory Committee. Richard W. Flournoy, Jr., assistant to the Legal Adviser of the Department of State, was appointed as reporter on Nationality; George Grafton Wilson, of Harvard, was named reporter on Territorial Waters; and Edwin M. Borchard, of Yale, became reporter on the subject of Responsibility of States.

The immediate object of the Research was to prepare a draft convention on each of the three chosen topics, which would express the collective judgment of representative American scholars and jurists. Each article of such drafts was to be accompanied by comment and detailed explanation, with citations, stating the existing law as well as the reasons for any proposed modifications. The draft conventions and comment, when completed, were to be published and made available for the consideration of the delegates of all States represented at the general codification conference called by the League of Nations.

Numerous meetings of the reporters and their advisers, followed by meetings of the Advisory Committee as a whole, at which gatherings tentative drafts were discussed at length and revised as necessity appeared, resulted in the adoption in February, 1929, of final drafts with elaborate accompanying comment, which were published in the following April.[2] Copies of the volume containing these three draft conventions were circulated by the Secretary-General of the League of Nations to all the governments invited to be represented at the Codification Conference, and were also distributed to each delegation at the Conference.

Another valuable publication of the Research issued at this time was a collection of the nationality laws of the various countries of the world. No adequate collection of such laws had theretofore been made. The texts were assembled with the assistance of the Department of State and edited by Richard W. Flournoy, Jr., and Manley O. Hudson. They were published through the Carnegie Endow-

1. At the present time the following persons comprise the Advisory Committee: George W. Wickersham, Chairman, Chandler P. Anderson, Joseph W. Bingham, Edwin M. Borchard, Clement L. Bouvé, Philip Marshall Brown, Charles K. Burdick, Charles C. Burlingham, Benjamin N. Cardozo, Joseph P. Chamberlain, Frederic R. Coudert, William Denman, William C. Dennis, Edwin D. Dickinson, Frederick S. Dunn, Clyde Eagleton, Charles G. Fenwick, George A. Finch, Richard W. Flournoy, Jr., Raymond B. Fosdick, Henry S. Fraser, James W. Garner, Green H. Hackworth, Learned Hand, Amos S. Hershey, Frank E. Hinckley, Charles Cheney Hyde, Philip C. Jessup, Howard Thayer Kingsbury, Arthur K. Kuhn, William Draper Lewis, John V. A. MacMurray, David Hunter Miller, Roland S. Morris, Stanley Morrison, Pitman B. Potter, Jackson H. Ralston, Jesse S. Reeves, Elihu Root, James Brown Scott, Daniel C. Stanwood, Ellery C. Stowell, Van Vechten Veeder, Thomas Raeburn White, John B. Whitton, George Grafton Wilson, John M. Woolsey, Lester H. Woolsey, and Quincy Wright. Edwin B. Parker, formerly a member, has since died; Charles E. Hughes resigned on assuming the office of Chief Justice; and J. Reuben Clark resigned on taking up his duties as Ambassador to Mexico.

2. Republished in a special supplement to the *American Journal of International Law*, Vol. 23, No. 2, (April, 1929).

ment for International Peace, and were circulated to the governments and to each delegation at the Codification Conference.

The Codification Conference, officially known as the First Conference for the Codification of International Law, convened at The Hague in March, 1930, and continued in session for four weeks. The delegation from the United States consisted of five persons, three of whom, including the head of the delegation, were members of the Advisory Committee of the Research.[3] Two other members of the Advisory Committee and the Director of the Research were appointed as technical advisers.[4] The outcome of the Codification Conference was somewhat disappointing, because it was found impossible to agree on conventions on Territorial Waters and Responsibility of States. On the other hand, a convention was adopted and three protocols were signed on the subject of Nationality. The conference also drafted definitions and a number of articles on the legal status of the territorial sea, but was unable to come to agreement as to the extent of the marginal sea and the right of jurisdiction or control for special purposes beyond the marginal belt. The Conference pointed out the desirability of ichthyological research to protect fish in special areas, indicating that once such matters are agreed upon, the question as to the extent of territorial waters will be much less difficult to solve. No agreement could be reached on the topic of Responsibility of States, due to the political and economic considerations involved. It is to be hoped that a second codification conference may be convoked in the not too distant future, with perhaps a less ambitious program to deal with.

The Harvard Research continued its labors after the Codification Conference of 1930. Four additional subjects, originally selected by the Committee of Experts for the Progressive Codification of International Law, were chosen and reporters named. Jesse S. Reeves became reporter on Diplomatic Privileges and Immunities; Joseph W. Bingham on Piracy; Quincy Wright on Legal Position and Functions of Consuls; and Philip C. Jessup on Competence of Courts in regard to Foreign States. The law of these important fields has now been explored with the greatest care, and a draft convention completed on each subject. The texts thereof with accompanying comment are now in the course of publication as supplements to the American Journal of International Law. In the consideration of these questions, several members of the Department of State in Washington were of invaluable assistance as advisers to the reporters; their cooperation, however, was entirely unofficial, and the draft conventions should not in any way be taken to represent the point of view of the United States government. The aim of the Research has been to prepare a scientific but eminently practical formulation of law, without regard to the point of view of any particular government.

As valuable by-products of this second phase of the Research, a collection of piracy laws of all countries has been edited by Professor Stanley Morrison of Stanford University; and a collection of the Diplomatic and Consular Laws and Regulations of all countries is in process of preparation under the editorship of A. H. Feller and Manley O. Hudson. The Department of State has collaborated in making these collections, and with the cooperation of the Division of International Law of the Carnegie Endowment for International Peace, it is planned to publish the latter collection as a companion volume to the collection of nationality laws issued by the Research in 1930.

The work of the Research is now entering upon a third phase. A resolution passed by the Twelfth Assembly of the League of Nations in September, 1931, declared the decision of the League "to continue the work of codification with the object of drawing up conventions which will place the relations of States on a legal and secure basis without jeopardizing the customary international law which should result progressively from the practice of States and the development of international jurisprudence." The Assembly further resolved that in the future any State or group of States, whether Members of the League or not, may propose to the Assembly a subject or subjects with respect to which codification by international conventions should be undertaken, which proposals will be weighed by the Assembly in accordance with a certain definite procedure.

From the above it is apparent that a larger responsibility for the future of codification is now placed on private and unofficial bodies, similar to the Harvard Research, for it will undoubtedly prove true that governments will be slow to act upon the invitation of the League without previous exploration of topics by bodies in a position to conduct scientific research. For these reasons and because of its belief in the future of international law, the Advisory Committee of the Research, at a full session held in Cambridge last February, voted to undertake a three-year study of the following important subjects: (a) Extradition (Charles K. Burdick, Reporter); (b) Jurisdiction to Punish for Crimes (Edwin D. Dickinson, Reporter); and (c) Law of Treaties (James W. Garner, Reporter). The method of work will be the same as in the past, i.e., a draft convention will be prepared on each subject, accompanied by historical and expository comment, bibliographical references, opinions of national and international tribunals, statements of governmental policies and practices, etc. It is hoped that the future of the Research will justify the description of its earlier work by the Secretary-General of the League of Nations, namely, as "a scientific contribution of a unique kind towards the development of international law."

3. David Hunter Miller, Green H. Hackworth, and Richard W. Flournoy, Jr. The other members of the delegation were Theodore G. Risley and Ruth B. Shipley.

4. Jesse S. Reeves, Edwin M. Borchard, and Manley O. Hudson. The other technical advisers were A. A. Corwin, S. W. Boggs and Emma Wold.

TENTATIVE PROGRAM FOR THE FIFTY-FIFTH ANNUAL MEETING

THE meeting of the National Association will be preceded by the annual conference of the Commissioners on Uniform State Laws beginning Tuesday, October 4th, and by the meeting of the various allied organizations and sections of the American Bar Association on Monday and Tuesday, October 10th and 11th. The social feature of the conference of Commissioners on Uniform State Laws is a motor trip scheduled for Sunday, October 9th, to Antietam, Harper's Ferry, Martinsburg and return, with a luncheon at Martinsburg.

The general program of the meeting of the Association proper begins Wednesday, October 12th and proceeds as follows: At the morning session October 12th, welcome and response addresses, and formal business; afternoon session, addresses of guests followed by reports of the conference of the Commissioners on Uniform State Laws, the American Law Institute and the sections. At the evening session possibly an address by the President of the United States, who has the invitation under advisement, and if the press of official duties prevents his accepting the invitation, then there will be an address by another distinguished speaker, which will be followed by the reception of the President of the Association. This will be followed by dancing.

On the morning of October 13th comes the event of chief interest—the laying of the cornerstone of the Supreme Court building. The tentative program consists of an address by an outstanding member of the Bar and response by the Chief Justice. These ceremonies will begin at 10 A. M. and will last until 11:30. The details of the program are under consideration by committees of the Bar of the Supreme Court of the United States, of the American Bar Association and of the host organizations.

On the afternoon of Thursday there will be a guest address, followed by reports of important committees of the Association, with probable early adjournment for a garden party. Arrangements will doubtless be made for golf by those who prefer golf and there may be a golf tournament. The evening of Thursday will be given over to one or two semi-official receptions. The details for this evening have not yet been settled. On Friday morning, October 14th, will come committee reports; in the afternoon bestowal of the American Bar Association medal, election of officers and miscellaneous business, etc. In the evening there will be addresses by two distinguished guests. Saturday, both morning and afternoon, will be given over to entertainment, the details of which have not yet been definitely settled but they have gone so far as to enable the host associations to assure everybody a delightful time. At 8 P. M. on Saturday evening comes the annual dinner of the Association.

One other feature which the host associations will endeavor to make a special feature of this meeting will be the entertainment of members of the association as guests at private dinners given by individual members of the host associations on Wednesday, Thursday and Friday evening. The host associations particularly desire to make available to the visitor that type of home and club private entertainment for which Washington is justly famous. There has been sent to each member of the Bar Association with the bill for the annual dues the invitation to the annual meeting. This sets out the names of the four host associations and these groups have joined in a combined effort to make the annual meeting as great a success as can possibly be achieved. These four groups have a resident membership of about two thousand. Substantially all of them are members of the American Bar Association. Both the Federal Bar Association and the Patent Bar Association have many members outside of Washington. The other two associations are entirely local.

It is evident that in the membership of these associations there is the nucleus of a large meeting of the American Bar Association for 1932, but the first thought of all the members of these host associations is that they expect to devote themselves en masse and individually to seeing to it that the members of the American Bar Association and the other guests of the Association shall have a royal time at the 1932 annual meeting.

Two arguments were used by the representatives presenting the invitation for this year's annual convention at the Atlantic City meeting. The first was that it is the bicentennial anniversary of the birth of George Washington, and the second was that the cornerstone of the Supreme Court building is to be laid during the period of this annual meeting.

For several years the Bicentennial Commission has been planning for the proper observance in this, his name city, as well as throughout the United States and the rest of the world, of this two hundredth anniversary of the birth of George Washington. Representatives of the Bicentennial Commission cooperated in the effort to bring the annual meeting of the American Bar Association to Washington and will cooperate in every way possible to make that meeting a success.

As has been said, the cornerstone of the Supreme Court building is to be laid during the meeting of the Association this year. All the members attending the annual meeting will be enabled to participate in this ceremony. Doubtless many coming to Washington will not have been admitted to the Bar of the Supreme Court and there will be an opportunity for the admission of those in attendance who wish to be qualified. A letter addressed to Mr. Elmore Cropley, Clerk of the Supreme Court of the United States, will bring to each possible applicant for admission a full set of forms and instructions for that purpose and any member of the host association will be glad to cooperate in helping those desiring admission to secure it.

FRANK S. BRIGHT.

Ghairman, Publicity Committee of the District of Columbia Bar Association.

Wednesday Morning, October 12, at 10 O'clock

Constitution Hall

Address of Welcome.

Annual Address by the President of the Association.

Announcements.

Report of Secretary.

Report of Treasurer.

Report of Executive Committee.

Wednesday Afternoon, October 12, at 2:30 O'clock

Assembly Room, U. S. Chamber of Commerce Building

Address by Hon. Kimbrough Stone, Senior United States Circuit Judge of the Eighth Circuit.

Statement concerning the work of the American Law Institute, William Draper Lewis, Director.

REPORTS OF SECTIONS

Comparative Law Bureau, William M. Smithers, Philadelphia, Pa.

Conference of Bar Association Delegates, Philip J. Wickser, Buffalo, N. Y.

Criminal Law & Criminology, Justin Miller, Durham, N. C.

Judicial Section, Carrington T. Marshall, Columbus, Ohio.

Legal Education & Admissions to the Bar, John Kirkland Clark, New York City.

Mineral Law, James C. Denton, Tulsa, Oklahoma.

Patent, Trademark & Copyright Law, Charles H. Howson, Philadelphia, Pa.

Public Utility Law, Frank A. Reid, New York City.

National Conference of Commissioners on Uniform State Laws, William M. Hargest, Harrisburg, Pa.

Wednesday Evening, October 12, at 8:30 O'clock

Constitution Hall

Election of General Council.

Address (Speaker and subject to be announced later).

10 P. M.—President's Reception. Mayflower Hotel.

Thursday Morning, October 13, at 10 O'clock

Laying of Cornerstone of United States Supreme Court Building.

Guy A. Thompson, President of American Bar Association presiding.

Address on behalf of the Bar of the Supreme Court by John W. Davis, New York City.

Response on behalf of the Supreme Court by the Chief Justice of the United States.

Music by United States Marine Band.

Thursday Afternoon, October 13, at 2:30 O'clock

Assembly Room, U. S. Chamber of Commerce Building

Address by Hon. William D. Mitchell, Attorney General of the United States.

REPORTS OF COMMITTEES

American Citizenship, F. Dumont Smith, Hutchinson, Kansas.

International Law, James Grafton Rogers, Washington, D. C.

Jurisprudence & Law Reform, Paul Howland, Cleveland, Ohio.

Uniform Judicial Procedure, George W. McClintic, Charleston, W. Va.

Federal Taxation, Robert E. Coulson, New York City.

Judicial Salaries, Alexander B. Andrews, Raleigh, N. C.

Admiralty & Maritime Law, Alfred Huger, Charleston, S. C.

Commerce, Rush C. Butler, Chicago, Illinois.

Coordination of the Bar, Jefferson P. Chandler, Los Angeles, Cal.

Publicity, Walter H. Eckert, Chicago, Illinois.

Memorials, William P. MacCracken, Jr., Washington, D. C.

Thursday Evening, October 13

(Program to be announced later.)

Friday Morning, October 14, at 10 O'clock

Assembly Room, U. S. Chamber of Commerce Building

REPORTS OF COMMITTEES

Aeronautical Law, George B. Logan, St. Louis, Mo.

Communications, Louis G. Caldwell, Washington, D. C.

Professional Ethics & Grievances, Thomas Francis Howe, Chicago, Ill.

Supplements to Canons of Professional Ethics, Hugh M. Morris, Wilmington, Delaware.

Unauthorized Practice of the Law, John G. Jackson, New York City.

Practice of Law in District of Columbia, William C. Sullivan, Washington, D. C.

Commercial Law and Bankruptcy, Jacob M. Lashly, St. Louis, Mo.

Insurance Law, Merritt U. Hayden, Detroit, Michigan.

Legal Aid Work, Reginald Heber Smith, Boston, Mass.

Change of Date of Presidential Inauguration, Jesse A. Miller, Des Moines, Iowa.

Noteworthy Changes in Statute Law, Joseph P. Chamberlain, New York City.

Friday Afternoon, October 14, at 2:30 O'clock

Assembly Room, U. S. Chamber of Commerce Building

Address by Hon. Hatton W. Sumners, Chairman of the Judiciary Committee of the House of Representatives.

Award of American Bar Association Medal.

Nomination and Election of Officers.

Miscellaneous Business.

Friday Evening, October 14, at 8:30 O'clock

Constitution Hall

(Program to be announced later.)

Saturday, October 15

All day trips to points of interest for members, who will be guests of Local Associations.

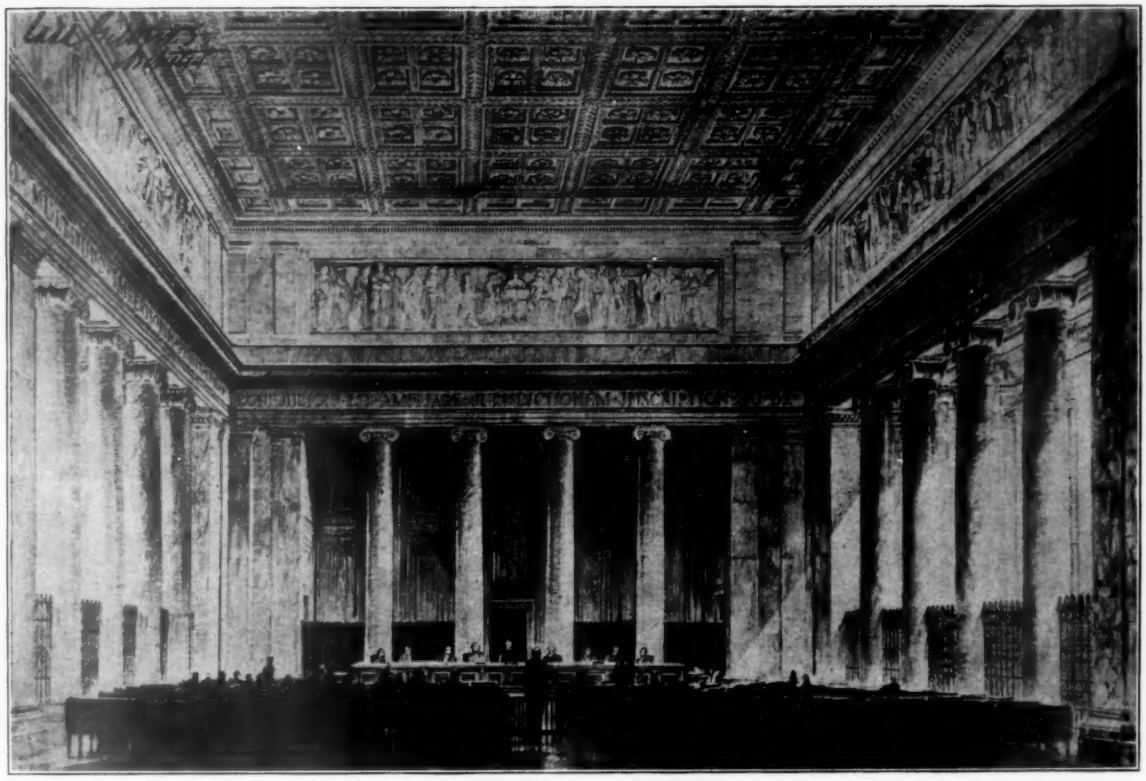
Boat and motor trips to Mt. Vernon.

Motor trips to Alexandria, Arlington, Annapolis, Laurel Races, etc.

(Completed program to appear in later announcements.)

Saturday, October 15, at 7:30 P. M.

Annual Dinner, Mayflower Hotel.



Court Room, New United States Supreme Court Building — Wide World.

Tentative Programs of Committees, Sections and Other Organizations

Standing Committee on Commerce

United States Chamber of Commerce Building

Tuesday, October 11, 10:00 A. M.

Rush C. Butler, Chairman, presiding.
Subject: Federal Anti-Trust Laws.
Addresses by:
James W. Gerard, New York City.
David L. Podell, New York City.

2:00 P. M.

Joint Session with Mineral Law Section, Grill Room, Mayflower Hotel

Discussion of Amendments to Federal Anti-Trust Laws.

Speakers:

Address by Walker D. Hines, New York City.

Address by Francis Wilson, Santa Fe, New Mexico, on the subject of "Interstate Compacts Under the Constitution—Past Uses and Future Possibilities."

Address by Gerard Swope, President of General Electric Company, New York City.

General Discussion opened by Rush C. Butler, Chairman of Committee on Commerce, and Walter F. Dodd, Chairman of Committee on Conservation of Mineral Resources, Mineral Law Section.

Standing Committee on Communications

Chinese Room, Mayflower Hotel

Monday, October 10, at 10:00 A. M. and 2:00 P. M.

Louis G. Caldwell, Chairman, presiding.

Open meeting for general discussion of subjects covered by report of the Committee.

Special Committee on Unauthorized Practice of the Law

United States Chamber of Commerce Building

Tuesday, October 11, at 2:00 P. M.

John G. Jackson, Chairman, presiding.

Consideration of "The Relation of Collection Agencies, Credit Associations and Law Lists to the Legal Profession."

Addresses by Robert A. B. Cook, Boston, Mass., and Jacob M. Lashly, St. Louis, Mo.

General Discussion.

National Conference of Commissioners on Uniform State Laws—Forty-Second Annual Meeting

Mayflower Hotel, Washington, D. C.

Tuesday, October 4, to Monday, October 10, inclusive, 1932

Program to be announced later.

Comparative Law Bureau

Mayflower Hotel

Tuesday, October 11

1:00 P. M.—Meeting of Council.
2:00 P. M.—Meeting of Bureau.

Conference of Bar Association Delegates

Ball Room, Mayflower Hotel

Monday, October 10, Morning Session, 10 O'clock

Chairman's Report.

Business Session.

Reports of Committees.

Address by Stuart H. Perry, Judicial Selection in Its Relation to the Press, the Legal Profession and a Coordinated Bar.

General Discussion to be led by Mr. A. V. Cannon, Chairman of Committee on Judicial Selection, and Mr. Andrew R. Sherriff, Chairman of Committee on Cooperation between Press and Bar.

Luncheon at Mayflower Hotel.

Afternoon Session, 2:00 O'clock

Topic: Coordination of the Bar.

Addresses discussing this problem from varying points of view:

Samuel Seabury, President, New York State Bar Association, a voluntary State Association.

John W. Davis, President, Association of the Bar of the City of New York, a metropolitan Local Association.

Earle W. Evans, Chairman, General Council of the American Bar Association, a National voluntary Association.

Charles A. Beardsley, Ex-President California State Bar, an incorporated State Association.

General Discussion to be led by Conference Committee on Bar Reorganization, Robert H. Jackson, Chairman.

Presentation and analysis of any concrete proposals by delegates.

Annual Dinner in conjunction with American Judicature Society, Mayflower Hotel, 7 P. M.

Section of Criminal Law and Criminology

Chinese Room, Mayflower Hotel

Tuesday, October 11, 1932

10:00 o'clock A. M.

Meeting of Council.

2:00 o'clock P. M.

Justin Miller, Chairman, presiding.

Report of Chairman and Secretary.

REPORTS OF COMMITTEES

Cooperation with American Law Institute, Howard B. Warren, Shreveport, La.

Psychiatric Jurisprudence, Rollin M. Perkins, Iowa City, Iowa.

Medico-Legal Problems, Albert J. Harno, Urbana, Illinois.

Mercenary Crime, George A. Bowman, Milwaukee, Wisconsin.

Cooperation with American Prison Association, James J. Robinson, Bloomington, Ind.

Examination of Code of Criminal Procedure prepared by American Law Institute, J. Weston Allen, Boston, Mass.

Training and Selection of Personnel in Administration of Criminal Justice, John Barker Waite, Ann Arbor, Mich.

Appointment of Nominating Committee.

8:00 o'clock P. M.

Address by Charles L. Chute, New York City, Secretary of the National Probation Association, "Juvenile Probation."

Address by Charles E. Hughes, Jr., New York City, President of the National Probation Association, "Adult Probation."

Discussion.

Report of Nominating Committee.

Election of Officers.

Judicial Section and National Conference of Judicial Councils—Joint Meeting

Ball Room, Mayflower Hotel

Tuesday, October 11, 1932

Morning Session, 10:00 O'clock

Carrington T. Marshall, Chief Justice of the Supreme Court of Ohio, Chairman of the Judicial Section, presiding.

Afternoon Session, 2:00 O'clock

James W. McClendon, Chief Justice of the Court of Civil Appeals of Texas, Chairman of the National Conference of Judicial Councils, presiding.

Evening Session 7:00 O'clock

Annual Dinner for Members, Ladies and Guests.

The program, which will be announced in detail later, will center on methods of securing more accurate and complete information concerning the activities of the courts of this country. Major attention will be given to judicial statistics with particular reference to definitive action for the improvement of periodic reporting by the courts.

A pamphlet giving detailed plans for a competent system of judicial criminal statistics on a nation-wide basis is being prepared by experts in the field. It will be printed and distributed in advance of the meeting. Discussion of the pamphlet will be one of the features of the program.

There will be brief ten-minute reports by representatives of various judicial councils on the present status and future plans of their work in judicial statistics. In addition, at least twelve representatives of educational institutions and of agencies concerned with the gathering of judicial statistics will report briefly on their activities in this field.

Final acceptances have not been received to all invitations sent out to speakers. Among the speakers will be:

Hon. William D. Mitchell, Attorney General of the United States.

Hon. Robert P. Lamont, Secretary of Commerce.

Dean Roscoe Pound, Law School of Harvard University.

Dean Leon Green, Northwestern University School of Law.

Judge Harold B. Wells, the New Jersey Court of Appeals.

A member of the United States Supreme Court.

Section of Legal Education and Admissions to the Bar

United States Chamber of Commerce Building

Tuesday, October 11, 2:00 P. M.

John Kirkland Clark, Chairman, presiding.

General Subject: "Overcrowding of the Bar and what should be done about it."

Names of speakers will be announced later.

Discussion.

Election of Officers.

Section of Mineral Law

Grill Room, Mayflower Hotel

Tuesday, October 11, 10:00 A. M.

James C. Denton, Chairman, presiding.

Reading of Minutes.

Disposition of routine matters.

Appointment of Nominating Committee.

Address by Honorable H. D. Rummel, Charleston, West Virginia, on "Constitutional Powers of Congress Over the Production of Natural Resources and Their Shipment in Interstate Commerce."

Address by Mr. W. P. Z. German, of Tulsa, Okla., on the subject of "Conservation and Analysis of Champlin Decision."

Report of Nominating Committee.

Report of Committee on Conservation of Mineral Resources.

Reports of State Committees.

2:00 P. M.

Joint Session with Committee on Commerce

Discussion of Amendments to Federal Anti-Trust Laws—

Speakers:

Address by Walker D. Hines, New York City.

Address by Francis Wilson, Santa Fe, New Mexico, on the subject of "Interstate Compacts Under the Constitution,—Past Uses and Future Possibilities."

Address by Gerard Swope, President of General Electric Company, New York City.

General Discussion opened by Rush C. Butler, Chairman of Committee on Commerce, and Walter F. Dodd, Chairman of Committee on Conservation of Mineral Resources, Mineral Law Section.

Section of Patent, Trademark and Copyright Law

United States Chamber of Commerce Building

Charles H. Howson, Chairman, presiding.

Sessions will be held at 10:00 A. M. and 2:00 P. M. each day and reports of Section Committees will be presented and considered.

Tuesday, October 11, 7:00 P. M., Grill Room, Mayflower Hotel

Annual Dinner for members, ladies and guests.

Section of Public Utility Law

United States Chamber of Commerce Building

Monday and Tuesday, October 10 and 11, 1932

Monday, 9:00 A. M.

Meeting of the Council.

Opening Session, 10:00 A. M.

Call to order by Chairman.

Address of Welcome.

Address by Chairman, Frank A. Reid, New York, N. Y.

Report of Standing Committee as to Developments During the Year in the Field of Public Utility Law. Harry J. Dunbaugh, Chicago, Illinois, Chairman.

Report of Special Committee on the Boundaries between State and Federal Regulatory Powers over Public Services, and the Fundamental Consequences of Extending the Federal Authority. George Roberts, New York, N. Y., Chairman.

Report of Special Committee on the Nature of the Functions of State Commissions; the Extent to which they should Act Quasi Judicially; the Improvement of Procedure in Litigation before Commissions, and the Status and Tenure of the Members and Staffs of the Commissions. Albert J. Stearns, Augusta, Maine, Chairman.

Discussion of Addresses and Committee Reports.

Adjournment.

Second Session, 2:15 P. M.

Address (Speaker and subject to be announced later).

Report of Special Committee on the Law of Valuing Utility Property taken under the Exercise of Eminent Domain, with especial reference to Severance Damages where part of an Interconnecting System is taken. Richard J. Smith, New Haven, Connecticut, Chairman.

Report of Special Committee on the Scope and Standards of Accounting Regulations Prescribed for Public Utilities, with especial reference to "Recapture," Security Issues, Merchandising and the Effect of Accounting Regulations upon Property Rights in General. George R. Grant, Boston, Mass., Chairman.

Discussion of Address and Reports.

New Business.

Adjournment.

Tuesday

Third Session, 10:00 A. M.

Address by Professor Philip Cabot of the Harvard Graduate School of Business Administration on the Handling of Rate Questions before Commissions along Economic and Business Lines rather than along the Technical Lines of a Law Suit.

Address by Mr. David E. Lilienthal, of the Public Service Commission of Wisconsin, on the Extent to which the States can and should Regulate Holding and Supervision Companies, particularly as respects Transactions and Relations between Operating Companies and Holding or Supervision Companies or other Operating Companies in the same Group.

Report of Special Committee on the Applicability to Public Utilities, especially in the Field of Transportation, of Anti-Trust Laws and the Fundamental Principles underlying Same in the light of Development of Regulatory Control and of New Economic Conditions. R. V. Fletcher, Chicago, Ill., Chairman.

Discussion of Addresses and Report.

Report of Nominating Committee and Election of Officers.

New Business.

Adjournment.

2:00 P. M.

Golf at the Congressional Country Club. (Putting and Bridge for the Ladies.)

7:00 P. M.

Annual Dinner of the Section of Public Utility Law at the Congressional Country Club. Ladies invited. Dancing.

National Conference of Bar Examiners

United States Chamber of Commerce Building

Monday, October 10

10:00 A. M.

Summary of Progress made by National Con-

ference of Bar Examiners, by James C. Collins, Chairman.

General subject for discussion: "Problems which face Bar Examiners."

Addresses by:

Albert J. Harno, President Association of American Law Schools.

Alfred Z. Reed, Director of the Carnegie Foundation for Advancement of Teaching.

William Harold Hitchcock, Chairman of the Massachusetts Board of Bar Examiners.

2:00 P. M.

Round table conferences. (Subjects to be announced later.)

Tuesday, October 11

10:00 A. M.

Business Session. (Program will be announced later.)

Preliminary Program of the Twenty-Sixth Annual Meeting of the National Association of Attorneys General

The Jefferson Room, Mayflower Hotel

Monday, October 10, 10 A. M.

Conference called to order by the President: Clement F. Robinson, Attorney General of Maine.

Report of Secretary-Treasurer: Ernest L. Averill, Deputy Attorney General of Connecticut.

Report of Executive Committee as to new Constitution.

Discussion.

President's Address: The International Conference on Comparative Law held at The Hague, Holland, August 2-6, 1932.

Address by Clarence E. Martin, Martinsburg, W. Va., representing the American Bar Association.

Address (To be announced).

Discussion.

Recess. Luncheon of members of Association and Guests.

2:30 P. M.

Extradition:

Report of the Committee of the Association appointed at 1931 Annual Meeting, Joseph E. Warner, Attorney General ot Massachusetts, Chairman.

Remarks by representative of National Conference on Uniform State Laws.

Discussion.

Address: The Attorney General as a Law Enforcing Official, James M. Ogden, Attorney General of Indiana.

Discussion.

Tuesday, October 11, 10 A. M.

The Interrelation of Federal and State Governments, in Taxation and other Respects:

Report of the Committee of the Association, Thomas E. Knight, Jr., Attorney General of Alabama, Chairman.

Address by the United States Attorney-General or his representative.

Discussion.

Address. (To be announced.)

Appointment of Committee on Nominations.

Appointment of Committee on Resolutions.

2:30 P. M.

Address. (To be announced later.)

Discussion.

Report of Special Committee on Resolutions on the death of Honorable George M. Napier, Attorney General of Georgia, former President of this Association.

Report of Committees on Nominations and Resolutions.

Discussion, Election of Officers, Adjournment.

International Association for the Protection of Industrial Property—American Group

Annual Luncheon Meeting, Mayflower Hotel, Tuesday, October 11, 1932

1:00 P. M.

Report by Henry M. Huxley, President of the American Group, on recent Congress, held in London, at which he was a delegate.

Committee reports and recommendations.

Election of Officers.

The American Group, formed to enlarge the protection accorded to inventions, marks and designs, and to procure the adoption of laws and agreements relating to such protection, has met annually for the last three years in conjunction with the meeting of the American Bar Association.

Members of the American Bar Association, who may be interested, are cordially invited to attend the luncheon and meeting, and reservations may be made upon request to the Executive Secretary of the American Bar Association, 1140 N. Dearborn Street, Chicago, Ill.

Arrangements for the Fifty-Fifth Annual Meeting

Washington, D. C., October 10-15, 1932

Section Meetings, Monday and Tuesday, October 10 and 11.

General Sessions, Wednesday, Thursday and Friday, October 12, 13, 14, 1932.

Annual Dinner Saturday evening, October 15.

HEADQUARTERS: Hotel Mayflower, Connecticut Avenue.

Hotel accommodations are available as follows:

	Single (For 1 Person)	Double (For 2 Persons)	Twin Beds (For 2 Persons)	Parlor Suites
Carlton	$5-6-7	$8	$9-10	$15-20-25
Hay-Adams	$4	$6-8	$10	$12 and up
Mayflower*			$10-12	$17-18-22-24 for 2 persons ($2 less for 1)
Powhatan	$3.50-4-5	$6	$7-8	$12-15
Raleigh	$3.50-4-5	$5-5.50-6.50	$7-8-9	$12
Shoreham	$5	$8	$12	$12-15
Wardman-Park	$5	$7	$8	$10 and up
Washington	$5-6	$7-8	$8-10	$18 and up
Willard	$4-5-6	$6-7-8	$8-9-10	$17 and up

Reservations will be made at other Washington hotels upon request.

*The allotment of single rooms and $8 and $9 double rooms has been exhausted.

Explanation of Type of Rooms

A single room contains a single or double bed to be occupied by one person. A double room (same type

(*Continued on page* 553)

DEPARTMENT OF CURRENT LEGISLATION

Legislation Regarding Valuation of Insurance Company Bondholdings

By Sterling Pierson

RESOLUTIONS recently adopted by the Committee on Valuation of Securities of the National Convention of Insurance Commissioners make of interest legislation pertaining to the valuation of bonds held by insurance companies. The resolutions in question were as follows:

"Resolved, That this Committee on Valuation of Securities of the National Convention of Insurance Commissioners hereby endorses and recommends to the National Convention of Insurance Commissioners the principle of amortization of amply secured bonds for all types of insurance companies under proper conditions;

"Further Resolved, That, in the opinion of this Committee, present economic conditions make this an appropriate time for insurance commissioners and superintendents to permit such amortization;

"Further Resolved, That this Committee endorses and recommends legislation which would permit such amortization for all types of insurance companies in the sound discretion of the insurance commissioner or superintendent where such authority does not now exist."

It was natural that the purport of these resolutions should not be clear to those who were not familiar with insurance history and practices, and so perhaps it was to be expected that those depressed sceptics "who are influenced in their mental processes by existing circumstances, and do not carefully study the past," should, as one writer put it some eighteen years ago, "assume that the amortisation method is wanted only in order to show better results in times of depression."[1] Possibly, therefore, some study of "the past" will contribute something to the understanding of the significance of this action and the reasons therefor.[2]

While life insurance companies, both in this country and in Great Britain, had adopted and adhered to the amortization method of valuation of bonds for many years prior to 1908,[3] it appears that not until that year did the supervising insurance officials of this country seriously consider the general application of the method. In 1907 a depreciation in the market value of securities, culminating in the panic of October, 1907, had caused a tremendous shrinkage in the market values of all bonds, and had given the insurance commissioners a serious problem in determining the basis upon which bond holdings of insurance companies should be valued for annual statement purposes.[4] At one of the 1907 meetings of the National Convention of Insurance Commissioners a committee of three commissioners had presented a report on "An Amortization Plan for Valuing Fixed Term Securities and Proper Method of Valuation of Other Securities."[5]

The Superintendent of Insurance of New York, in his annual report to the Legislature in 1908, dealt with the amortization method of valuation at length.[6] In discussing the subject he was careful to draw a distinction, which has ever since been preserved, between the two different classes of securities held by insurance companies. With respect to one class, which included corporate stocks, real estate "and any other form of asset analogous thereto," he reached the conclusion that as to this class of assets a market value basis of valuation, however unstable from year to year, appeared to be the only available method. As to the other class of securities, consisting of bonds and other forms of securities bearing interest and falling due at a fixed maturity date, he concluded that the amortization plan of valuation was sound, and particularly so in the case of life insurance companies. He referred to this plan as one "demonstrated to be scientific in principle, tested by long experience, readily applied to all fixed term investments, free from the doubt or suspicion incident to the exercise of individual judgment, and equitable as between interests under one control but entitled to impartial participation in funds accumulated for distribution." He described the amortization method as follows:

"The method is based upon the original purchase price of bonds which are valued by computing their present value under the actual rate of interest realized if the bonds are held to maturity. The adjustment brings the bond exactly to its par value at maturity, whether bought at a premium or a discount, and whatever the contract rate of interest. While held the bond is unaffected by the inflation or collapse of market prices and fulfills its purpose of producing a steady income until maturity and then supplying with certainty its proportion of principal to meet the obligations of the company for which its payment has been calculated."

The peculiar applicability of such a method of valuation to the fixed term bond holdings of life insurance companies was also explained by the Superintendent, who pointed out that such a method was essential to the preservation of equity as between policyholders in the apportionment of surplus to them. He said:

"The liabilities of life insurance companies consist almost entirely of the present values of policy obligations issued by the companies. In this State the standard of valuation for contracts of insurance has been fixed by statute. Liabilities are calculated and determined on the assumption that a fixed rate of interest is to be earned on the assets held to offset these liabilities during the continuance of the contracts for which the liabilities are stated. A life company having a line of long term investments earning ample rates of interest to provide for all charges against income, and unquestionably secure as to payment of interest, as well as of principal at maturity

1. Henry Moir, "The Amortisation of Bonds and Valuation of Assets of a Life Insurance Company"—7 Transactions of the Faculty of Actuaries, p. 171, 174.

2. The term "amortization method" is used in this article to describe the method of valuation prescribed by the New York statute hereinafter set forth.

3. 7 Transactions of the Faculty of Actuaries, p. 174.

4. Forty-Ninth Annual Report of the Superintendent of Insurance of New York (1908), p. 11.

5. See Proceedings of the National Convention of Insurance Commissioners, 1908, pp. 46, 47, 174-194.

6. See op. cit. footnote 4, pp. 14-16.

in settlement of the company's obligations then falling due, should not be permitted through intervening years, upon violent alterations of market quotations and paper losses or profits, to deny an apportionment or payment of dividends to policyholders entitled to such on the ground that no surplus is shown in the yearly valuation, when its actual earnings and fund are in this respect unaffected each year, nor to pay at other times to those not entitled thereto increased dividends derived from a fictitious surplus by similar manipulations."

A bill to carry out the Superintendent's recommendations was submitted to the Legislature at its 1908 session but did not pass. In his annual report to the Legislature in 1909, a new Superintendent of Insurance renewed the suggestions made by his predecessor, with a query, however, as to the extent to which the amortization method could properly be applied to other than life insurance companies.[7]

The Legislature, acting upon the recommendation, enacted a law containing the following provision:

"No stock and no bond or other evidence of debt if in default as to principal or interest, or if not amply secured, shall be valued as an asset of the corporation above its market value. All bonds or other evidences of debt shall, if amply secured and if not in default as to principal or interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made; provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, and provided further that the superintendent of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule, and the values found by him in accordance with such method shall be final and binding; provided, also, that any such corporation may return such bonds at their market value or their book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing rule."[8]

This provision was by its terms applicable not only to domestic life insurance companies, but also to domestic fire and casualty companies. By administrative ruling it was extended to all life insurance companies authorized to do business in the State.[9] In his annual report to the Legislature in 1910, the Superintendent of Insurance stated that he had difficulty in understanding why companies "which do not, as it were, invest their funds permanently should be required to amortize their securities." He accordingly recommended that the amortization method of valuation be limited in application to life insurance companies unless "The Superintendent shall determine at any time, as, for instance, a period of financial depression such as that following the panic of 1907, that the bonds and securities of companies of other kinds—fire companies for instance—shall be valued on an amortized basis."[10] At its 1910 session the New York Legislature amended the valuation provisions of the New York law to make them applicable to "any life insurance corporation authorized to do business in this state," and to give the Superintendent of Insurance the discretion at any time to require any insurance corporation, other than a life insurance corporation, authorized to do business in the state, to value its bonds or other evidences of debt "in accordance with the foregoing rule."[11]

Subsequent to 1910 other states gradually swung over to the practice prescribed by the New York Insurance Law for all life insurance corporations authorized to do business in that state. In some instances this result was accomplished by departmental rulings.[12] But the legislatures soon began to take the matter in hand. In 1913 California adopted a statute giving the Insurance Commissioner discretion to permit any insurance corporation to value its bonds on an amortized basis if amply secured and not in default as to principal or interest, but the statute also provided that where a company chose to return its bonds at market or book values they should not be returned "at an aggregate value exceeding the aggregate of the values calculated according to the foregoing (amortization) rule."[13] New Jersey enacted a similar law, applicable, however, only to life insurance corporations, and giving them full authority to value their bonds either on an amortized basis, or on a book or market value basis, subject to the same limitation with reference to aggregate values as that provided by the New York and California laws.[14] In 1917 Oregon adopted amortization legislation similar to that of New York, except for the fact that the Oregon statute was made applicable only to life insurance companies and the Commissioner was given no authority to extend it to other types of companies.[15]

By December, 1917, although there was little legislation on the subject, the amortization basis of valuation of bonds held by life insurance companies had become well established largely by means of administrative rulings.[16] It was not surprising, therefore, that at its December meeting in 1917 the National Convention of Insurance Commissioners adopted a resolution stating it to be the sense of the meeting "that bonds held by life insurance companies shall be valued on the so-called amortization basis instead of on the basis of market value, and that in determining what bonds may be so valued and the method of arriving at their amortized value the provisions of Section 18 of Chapter 33 (sic), Laws of 1909 of the State of New York, shall govern, except where such law conflicts with that of another State."[17]

In 1919 amortization legislation was enacted in Connecticut and Minnesota. Connecticut, which previously had authorized the use of amortized values for bonds held by life insurance companies and fraternal societies, extended the authorization to all insurance companies.[18] Minnesota authorized the use of such values "by an insurance company or fraternal beneficiary association."[19] Virginia enacted a similar law in 1920.[20] Meanwhile at the

7. Fiftieth Annual Report of the Superintendent of Insurance of New York (1909), pp. 15-18.
8. Laws of New York, 1909, C. 301, Section 3.
9. Letter of New York Insurance Department dated August 9, 1909, sent to the President of each foreign life insurance company. "It is ruled that all life insurance companies, whether organized under the laws of this State, or, if not so organized, authorized to do business in this State, shall amortize their bonds returned in the annual statements showing their condition as of December 31, 1909, in accordance with the provisions of Section 18 of the Insurance Law, as amended in 1909."
10. Fifty-First Annual Report of the Superintendent of Insurance of New York (1910), p. 24.
11. Laws of New York, 1910, C. 634, Section 7.
12. See letter of Texas Insurance Department dated January 31, 1910, stating that "it is and has been the policy of the Department to permit the amortized values" and letter of Mississippi Insurance Department dated April 28, 1914, stating that "The amortization basis for the valuation of fixed term securities, as adopted by the States of New York, California and New Jersey will be satisfactory to this department."
13. Cal. Stats., 1913, p. 464.
14. N. J. Laws, 1913, C. 284.
15. Oregon Laws, 1917, C. 203.
16. See op. cit. footnote 1, p. 175, where the author stated that in 1914 "The system of valuation of bonds and other fixed term securities by amortisation is now recognized in thirty-one states, including such important states as Illinois, Indiana, and Pennsylvania."
17. See proceedings of the National Convention of Insurance Commissioners, 1918, p. 18.
18. Conn. Laws, 1919, C. 107.
19. Minn. Laws, 1919, C. 54.
20. Va. Laws, 1920, p. 835.

meeting of the National Convention of Insurance Commissioners in December of the preceding year, the Convention had adopted a resolution, presented by its Committee on Valuation of Securities, urging upon all insurance companies and associations and all fraternal benefit societies that thereafter they value all of their bonds having a fixed term and rate of interest, and not in default as to principal or interest, and if amply secured, upon the amortization plan.[21] The favorable vote came after considerable discussion of the question whether the amortization method should be applied to bonds held by insurance companies other than life companies. At the same time the Convention's attention was called to the fact that, while the amortization principle had been recognized by a great number of states in practice, comparatively few of them had sanctioned it by legislation. This resulted in there being referred to the Committee on Laws and Legislation the problem of drafting a uniform amortization bill which could be used by any state desiring to give legislative approval to the amortization plan. At the meeting of the Convention held in December of 1920 that Committee reported the following form of bill which was approved:

"All bonds or other evidences of debt having a fixed term and rate held by any life insurance company, assessment life association or fraternal beneficiary association authorized to do business in this State may, if amply secured and not in default as to principal and interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made; provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; and, provided further, that the Commissioner of Insurance shall have full discretion in determining the method of calculating values according to the foregoing rule."[22]

This affords a striking illustration of uniform legislation having its source in what may be called an administrative source. It will be noted that this bill applied only to life insurance companies and associations, and that it did not include the provision of the New York law to the effect that where a company valued its bonds on a book or market value basis, the aggregate values so reported should not exceed the aggregate values calculated on the amortization basis.

In 1921 the uniform bill was enacted in twelve states,[23] and with slight modifications in four others.[24] Pennsylvania enacted a law permitting amortization of bonds held by life insurance companies, provided they were of the type specified in the New York law, and also enacted the restrictive provision of the New York law with reference to aggregate market or book values.[25] The Pennsylvania statute also contained a further provision to the effect that "Any company or society, electing to adopt the amortized basis, shall continue to have its bonds valued on that basis." This is an interesting evidence of the fact that the use of the amortization method of valuation is not intended to be an avenue of escape in times of depression. Wyoming followed the New York statute except to the extent of substituting "may" for "shall."[26] The following year Kentucky[27] and South Carolina[28] adopted the uniform law, and Maryland[29] also enacted legislation along the same lines, but with the New York limitation as to aggregate market or book values.

Since that time six other states have enacted amortization legislation, one of them as late as 1931.[30] Colorado in 1925 passed a peculiar statute providing that "Bonds and similar securities shall be valued on the amortization plan at the price paid by the company therefor; provided, however, that in no event shall any bond or security be amortized to yield a rate of interest less than the rate required to maintain the company's reserve."[31] In 1931 Delaware, which had adopted the uniform law in 1925, passed an amendment which had the effect of making the amortization method applicable only to life insurance companies, and not to assessment life or fraternal beneficiary associations.[32]

From this survey it clearly appears that the amortization method of valuation is not a new one in the insurance field, and particularly in the life insurance field in which it has peculiar applicability from a scientific standpoint. As soon as the New York Insurance Department undertook to apply the 1909 law to all life companies authorized to do business in that state, the method became definitely established for all of the larger companies, and indeed for most of the life insurance companies doing business in this country. For many years the companies have been required to set forth in their annual statements to the Insurance Departments the amortized values of their fixed term bonds.[33] It also appears that this legislation, in the case of life insurance companies, is not available simply as a means of enabling them to show better results in times of financial depression. Statutes such as those of New York and Pennsylvania make it plain that the intention behind them is to stabilize bond values of life insurance companies in the interests of their policyholders, and to this end to prevent the companies from writing up their bond values in times of inflated values.

Probably no one is in a better position to speak with reference to the practical effect of such legislation than the Superintendent of Insurance of New York, under whose jurisdiction come the principal life insurance companies of the United States. It is worthy of note, therefore, that in moving the adoption of the resolutions set forth at the beginning of this paper, the present Superintendent said that "The amortization of bonds for life companies over a period of 22 years, a period reflecting both prosperity and depression, has proved to be wise, safe, and equitable." The leading actuaries of the country agree that the application of the amortization

(*Continued on page* 541)

21. See Proceedings of the National Convention of Insurance Commissioners, 1920, pp. 11-16, 22-25.

22. See Proceedings of the National Convention of Insurance Commissioners, 1921, p. 5.

23. Arizona, 1921, C. 60; Indiana, 1921, p. 59; Mich., 1921, Act 226; Missouri, 1921, p. 407; Montana, 1921, C. 214; Nevada, 1921, C. 165; N. C., 1921, C. 220; S. D., 1921, C. 268; Tenn., 1921, C. 128; W. Va., 1921, C. 128; N. D., 1921, C. 80; Utah, Act of March 5, 1921.

24. Kansas, 1921, C. 78, applicable to "any insurance company, corporation, assessment life association, beneficiary association or society, or fraternal beneficiary association or society"; Nebraska, 1921, p. 956, and New Hampshire, 1921, C. 21, applicable to "any insurance company, assessment life association or fraternal beneficiary association; and Wash., 1921, p. 352, applicable to "any insurance company."

25. Pa., 1921, P. L. 789.

26. Wyoming, 1921, C. 142.

27. Kent. Laws, 1922, C. 5.

28. S. C., Acts 1922, No. 564.

29. Maryland Laws, 1922, C. 492, Sect. 82.

30. Col. Laws, 1925, C. 117; N. M., 1925, C. 135; Del., 1925, C. 56; Ill., 1927, p. 578; Ark., 1929, Act 48; R. I., 1931, C. 1757, Sect. 5.

31. See footnote 30.

32. Del. Laws, 1931, C. 52, Sect. 34.

33. See ruling of New York Insurance Department set forth, *supra*, footnote (9).

AMERICAN BAR ASSOCIATION JOVRNAL

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JOSEPH R. TAYLOR,
MANAGING EDITOR

Journal Office: 1140 N. Dearborn Street
Chicago, Illinois

AND/OR-IANA

Our July editorial (sub-cap. And/Or) has stimulated correspondence and controversy, approval and disapproval. Space is lacking for the publication of the letters this month but a selection therefrom will appear next month.

Several of the letters assert that the symbol "and/or" has a definite and certain meaning but the writers are not in entire accord as to precisely what that meaning is, and none of them are in accord with the definition stated by the Supreme Court of Louisiana quoted in last month's editorial, nor are the Louisiana justices in accord with Baron Alderson in Baines v. Holland, 10 Exch. 807. If one is sufficiently interested in the question to read the opinions, he will see that the judges are not in agreement as to the interpretation of the symbol. Sometimes it is regarded as having a definite meaning and sometimes as purposely used to give room for construction in accordance with the general tenor of the document and the elastic enlargement of the categories.

Until the bar and the courts reach a precise accord as to the meaning of the term, will certainty be possible? Shall we call a symposium at the next annual meeting at Washington to frame an authoritative definition of the meaning of the term? If so, before we frame the definition shall we consider the varied meanings of the word "and"? Does the familiar sign "Boots and Shoes" mean that each sale must include both boots and shoes, or does it mean that one can buy boots or shoes or both at his option?

On the other hand, shall we look upon the use of this symbol as a blessing in disguise which imports into statutes and judicial procedure room for polemic controversy which might not be discovered if the old-fashioned words were used, thus providing for the practitioner unexpected sources of employment like those which flow from "the jolly testator who makes his own will."

It will be remembered that in the cases referred to in our former editorial, the courts were warning against the use of "and/or" in statutes, pleadings and instructions, and it was against such use of it that we added our protest.

Those who like it are, of course, at liberty to use it elsewhere and to those who like it and those who detest it let us recommend perusal of "The Which of And/Or" beginning on page 245 of the July Harper's.

A STUDY IN ATTITUDES

The report of the Judicial Council of New Jersey, recommending constitutional amendments affecting the judicial organization of the state, is significant and interesting quite apart from the specific changes proposed. For it represents—as do most of the reports of other Judicial Councils, for that matter—a change more important than any concrete suggestion, and that is a general change in the attitude with which the problems of judicial organization and administration are approached.

The first notable change in attitude suggested is that of the legislature. Not so many years ago it would probably have seemed to the legislature that the normal and necessary way to go about the business of improving the judicial system was to introduce the resolution or bill, have the whole thing threshed out in committee—in possibly a political atmosphere—and then have the legislature take the proper action. But times have changed and few legislatures regard themselves as universally competent these days.

They are beginning to realize that expert advice from a responsible source is advisable, in this field at least. Hence we find in the present case that, before considering the matter further, the legislature directed the Judicial Council "to make a complete study of the status of the judicial system of the State and report and submit to the

next legislature its findings and recommendations as to amendments to the Judiciary Article of the State Constitution."

Then there is the changed attitude of the profession as reflected in the creation of the Judicial Council itself, and particularly in the methods which the Council employed to reach its conclusion. There was a time, possibly not so long ago, when a priori ideas of how things ought to be done would have loomed very large in such a report. Research, study of other systems and, particularly, deference to the studies and opinions of the legal academic world, would in all probability have occupied a minor place in the proceedings. Here is how a group of judges and lawyers go about the matter now —to quote from the report:

"In drafting the proposed amendments to the Judiciary Article, we have not only considered the problem in the light of the Judicial history of the State, but we have also studied the matter analytically. In this connection, we have made a study of the court system of many States of the Union, with a view to determining upon the system most applicable to the needs of New Jersey, and we have reviewed substantially all the literature which has appeared on the subject during the past twenty years."

This change of attitude in legislatures and the profession is the fine result of the labors of legal scholarship and of the intellectual ferment in the profession during the past few decades. It is the guarantee that the problems of the law will be met, understood and solved.

SCHEMES TO DEFRAUD LAWYERS

Reports continue to be received of efforts to deceive and defraud the credulous and trusting members of the profession. In the June issue, we printed a warning to lawyers "to use due care in ascertaining the reliability of any law list, bureau of information, legal service or anything of the kind to which they are asked to subscribe by canvassers or otherwise." This represents perhaps the most familiar method of approach and one to which the careless and the credulous are most likely to succumb. It has at least a certain plausibility.

Of late, however, word has come of operations of the purely "confidence game" type. The newest of these schemes which the confidence artists have attempted to work in various sections of the country has an alleged Chicago "gangster" and "beer baron" as its protagonist. He claims to be a former associate of certain Chicago characters who have achieved notoriety and fortune by illicit operations. Unfortunately, he is at present on bad terms with them, and fears to return to Chicago to retrieve the million or so dollars which he has deposited in safety deposit boxes in that city. Wherefore he needs the aid of a lawyer to help him secure his funds and, incidentally, he asks a loan for temporary expenses.

The letters received by the Journal from New Jersey, New York and Texas, and personal information from Alabama, all indicate that none of the lawyers approached have fallen victims to the glittering lure of the scheme. But one wonders if all who have been interviewed by this particular type of artist have been so fortunate or discreet.

While some of the confidence artists are attempting a new departure, others continue to feel that the old familiar ways are good enough for them. For instance, we are just in receipt of a bulletin, which appears to have been sent to various Better Business Bureaus throughout the country, in which a time-tried and popular scheme to defraud lawyers is set out. A Toledo attorney—and probably attorneys in many other cities of the country—received a collect telegram from a person in an eastern city telling him of an accident to a railroad employe on a certain railroad and stating that he could arrange to move the case to the attorney's office. However, the telegram stated, help would be needed. A long-distance call followed the message.

"This appears," says the bulletin, "to be a fraudulent scheme to obtain money from attorneys for the ostensible purpose of defraying the expense of the prospective client in traveling from the point of accident to the attorney's office." A personal attempt to "take in" a Dallas lawyer on a fictitious damage suit against a railroad company, accompanied by the usual request for an advance of money, is reported in a letter to the Journal from Dallas, Texas.

No doubt the older members of the Bar are immune from such conventional schemes, but the younger and more credulous members would do well to regard with wholesome suspicion any unusual proposition from strangers, particularly when there is a request for cash.

REVIEW OF RECENT SUPREME COURT DECISIONS

Bill Signed by President Within Ten Days (Sundays Excepted) Becomes Law Even Though Congress Has Adjourned Before Signature Is Affixed—Construction of Senate Rules Relating to Consent to Presidential Appointments—Repeal of California's Constitutional Provision Giving Creditor Right to Recover From Directors of Corporation for Moneys Embezzled or Misappropriated Does Not Affect Rights Vested Prior to Such Repeal—Motor Vehicle Act of Kansas, Subjecting Public Motor Carriers to Provisions of State's Public Utility Laws, Held Valid—Texas Motor Vehicle Act Upheld

By Edgar B. Tolman*

Federal Statutes—Enactment—Executive Approval

A bill passed by Congress and presented to the President for signature during the session of Congress, becomes a law when signed by the President within ten days (Sundays excepted) after its presentation to him, even though Congress has finally adjourned, when the bill is signed.

Edwards v. United States, Adv. Op. 857; Sup. Ct. Rep., Vol. 52, p. 627.

In this opinion, by the Chief Justice, the Court considered a question relating to the validity of a Private Bill passed by Congress conferring jurisdiction on the Court of Claims to adjudicate a claim against the Government. The question involved was whether the approval of the Bill by the President was valid in view of the time when such approval was given. It had been approved by President Hoover within ten days (Sundays excepted) after it had been presented to him, but after final adjournment of Congress. The question as certified was in this form:

> "Did the Act of March 5, 1931 (46 Stat. 2163), become law when it was approved by the President on March 5, 1931, after the final adjournment on March 4, 1931, of the Congress which had passed it.

The Government and the claimant both agreed that the approval was sufficient and that the Bill was a Law. The Judiciary Committee of the House of Representatives, which had previously held a contrary view, appeared by *amicus curiae,* who stated that Committee is now of opinion that the President has the power asserted. The Court, however, considered the arguments advanced in the past denying the existence of the power, as well as the arguments advanced by the parties and *amicus curiae,* in reaching the conclusion that the question should be answered in the affirmative.

The provision of the Constitution under which the question arose is the second paragraph of Section 7, Article I, which provides that:

> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. . . If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

The two purposes toward which the last sentence of the provision is directed were thus described in the opinion:

> *First:* To insure promptness and to safeguard the opportunity of the Congress for reconsideration of bills which the President disapproves; hence, the fixing of a time limit so that the status of measures shall not be held indefinitely in abeyance through inaction on the part of the President. *Second.* To safeguard the opportunity of the President to consider all bills presented to him, so that it may not be destroyed by the adjournment of the Congress during the time allowed to the President for that purpose.

After observing that the effect of presidential approval within ten days after adjournment is not explicitly provided for by the Constitution, the uncertainty surrounding the question from the time of President Monroe's administration was referred to.

The case of *La Abra Silver Mining Co. v. United States,* 175 U. S. 423, was then cited, and its reasoning analyzed with reference to the present case. There the Court upheld the authority of the President to approve a bill during a recess of Congress, but within the time fixed by the Constitution. It expressly reserved, however, the question as to the power to approve after final adjournment.

> But the reasoning of the opinion applies with as much force to the case of an adjournment, whether it is at the close of a session or is the final adjournment of the Congress, as to the case of a recess for a specified period.
>
> The Court effectively answered the opposing contention based upon the legislative character of the President's function in approving or disapproving bills. See *Smiley v. Holm,* 285 U. S. —. The fact that it is a legislative function does not mean that it can be performed only while Congress is in session. The President acts legislatively under the Constitution but he is not a constituent part of the Congress. In the *La Abra* case the Court said (*id.* p. 454): "It is said that the approval by the President of a bill passed by Congress is not strictly an executive function, but is legislative in its nature; and this view, it is argued, conclusively shows that his approval can legally occur only on a day when both Houses are actually sitting in the performance of legislative functions. Undoubtedly the President when approving bills passed by Congress may be said to participate in the enactment of laws which the Constitution requires him to execute. But that consideration does not determine the question before us. As the Constitution while authorizing the President to perform certain functions of a limited number that are legislative in their general nature does not restrict the exercise of those functions to the particular days on which the two Houses of Congress are actually sitting in the transaction

*Assisted by James L. Homire

of public business, the court cannot impose such a restriction upon the Executive." From this point of view, and so far as the character of the President's function is concerned, it obviously makes no difference whether the Congress has adjourned *sine die* or to a day named.

The *La Abra* case was thought also to be sufficient answer to the objection that if the President may approve bills after adjournment, his action would be free of any limitation of time, because the opinion in that case expressly stated that to become a law by virtue of his approval, the approval must be manifested by signature within the period fixed by the Constitution. Further quoting from the *La Abra* case, the Court said:

> "The time within which he (the President) must approve or disapprove a bill is prescribed. If he approve a bill, it is made his duty to sign it. The Constitution is silent as to the time of his signing, except that his approval of a bill duly presented to him—if the bill is to become a law merely by virtue of such approval—must be manifested by his signature within ten days, Sundays excepted, after the bill has been presented to him. It necessarily results that a bill when so signed becomes from that moment a law. But in order that his refusal or failure to act may not defeat the will of the people as expressed by Congress, if a bill be not approved *and* be not returned to the House in which it originated within that time, it becomes a law in like manner as if it had been signed by him." But if this limitation of time applies to the President's action when the Congress is in recess, it is apparent that the limitation equally governs his action when the Congress has adjourned. The constitutional provision affords no basis for a distinction between the two cases.

In conclusion, and after adverting briefly to certain other objections, the Court emphasized the importance of construing the provision so as to effect its purpose of allowing sufficient opportunity for the President to consider bills presented to him for approval.

> Regard must be had to the fundamental purpose of the constitutional provision to provide appropriate opportunity for the President to consider the bills presented to him. The importance of maintaining that opportunity unimpaired increases as bills multiply. The Attorney General calls attention to the fact that at the time here in question, that is, between February 28, 1931, and noon of March 4, 1931, 269 bills were presented to the President for his consideration, 184 of which were presented to him during the last twenty four hours of the session. No possible reason, either suggested by constitutional theory or based upon supposed policy, appears for a construction of the Constitution which would cut down the opportunity of the President to examine and approve bills merely because the Congress has adjourned. No public interest would be conserved by the requirement of hurried and inconsiderate examination of bills in the closing hours of a session, with the result that bills may be approved which on further consideration would be disapproved or may fail although on such examination they might be found to deserve approval.
>
> In the instant case, the President, to whom the bill was presented, approved it within the time prescribed by the Constitution, and upon that approval it became a law. The question certified is answered in the affirmative.

The case was argued by Mr. Walton Hendry for Edwards, by Attorney General Mitchell for the United States, and by Mr. Hatton W. Sumners for the Judiciary Committee of the House of Representatives.

Legislative Procedure—Construction of Senate Rules Relating to Consent to Presidential Appointments

Under the applicable Senate Rules the Senate has no power, on the next day of executive session, to reconsider its vote advising and consenting to an appointment by the President, after its resolution of consent has been communicated to the President pursuant to an order of the Senate, and the appointee's commission has issued and he has taken the oath of office and entered upon the discharge of his duties, although the time provided by the Rules for reconsideration of the action has not expired.

United States v. Smith, Adv. Op. 650; Sup. Ct. Rep. Vol. 52, p. 475.

The Court in this opinion dealt with the controversy over the appointment of George Otis Smith as a member and chairman of the Federal Power Commission. A petition for a writ of *quo warranto* was filed in deference to the desire of the United States Senate to have the question as to the validity of the appointment presented for judicial determination.

In an opinion by MR. JUSTICE BRANDEIS, the validity of the appointment was upheld unanimously by the Court. The issue presented, in the language of the opinion, was this:

> Did the Senate have the power, on the next day of executive session, to reconsider its vote advising and consenting to the appointment of George Otis Smith, although meanwhile, pursuant to its order, the resolution of consent had been communicated to the President, and thereupon, the commission had issued, Smith had taken the oath of office and had entered upon the discharge of his duties.

The contention of the Senate was that it did not advise and consent to the appointment, because, by subsequent action for reconsideration, under its rules, it had refused consent, and had formally notified the President of its refusal. In support of this, the argument was, in substance, that its assent and notice were subject to the Rules which provide for return and reconsideration, and that the consent could have no conclusive legal effect until the time for reconsideration had expired.

After examination of the applicable Senate Rules and their historical development, the Court rejected, as unsound, the position taken by the Senate.

Rule XXXVIII, paragraphs 3 and 4, reads:

> "3. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion."
>
> "4. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate."

Rule XXXIX provides that the President shall be furnished with "on authenticated transcript of the executive records of the Senate, but no further extract from the Executive Journal shall be furnished by the Secretary, except by special order of the Senate. . . ."

At the outset the Court stressed the point that the case involved merely a question as to the correct interpretation of the Rules, rather than any question of constitutional power.

In construing the Rules, MR. JUSTICE BRANDEIS pointed out that the normal procedure contemplated is that notification shall be withheld until the time for reconsideration has expired, and that the question here related to the significance of the exceptional procedure ordered by the Senate of notification prior to such expiration.

That such exceptional procedure should have any less force than the normal method of notification

seemed inadmissible, in view of the confusion and uncertainty attendant on a different construction.

> The natural meaning of an order of notification to the President is that the Senate consents that the appointment be forthwith completed and that the appointee take office. This is the meaning which, under the rules, a resolution bears when it is sent in normal course after the expiration of the period for reconsideration. Notification before that time is an exceptional procedure, which may be adopted only by unanimous consent of the Senate. We think it a strained and unnatural construction to say that such extraordinary, expedited notification signifies less than final action, or bears a different meaning than notification sent in normal course pursuant to the rules.
>
> It is essential to the orderly conduct of public business that formality be observed in the relations between different branches of the Government charged with concurrent duties; and that each branch be able to rely upon definite and formal notice of action by another. The construction urged by the Senate would prevent the President from proceeding in any case upon notification of advice and consent, without first determining through unofficial channels whether the resolution had been forwarded in compliance with an order of immediate notification or by the Secretary in the ordinary course of business; for the resolution itself bears only the date of its adoption. If the President determined that the resolution had been sent within the time limited for making a motion to reconsider, he would have then to inform himself when that period expired. If the motion were made, he would be put upon notice of it by receipt of a request to return the resolution. But under the view urged by the Senate, that reconsideration may proceed even though the resolution be not returned, he would receive no formal advice as to the disposition of the motion, save in the case of a final vote of rejection or confirmation. The uncertainty and confusion which would be engendered by such a construction repel its adoption.
>
> The Senate has offered no adequate explanation of the meaning of an order of immediate notification, if it has not the meaning which Smith contends should be attached to it. Its counsel argues that the practice of ordering such notification developed at a time when the Senate passed upon nominations in closed session; and that the order may have been simply a means of furnishing the President with information, not available through public channels, concerning the probable attitude of the chamber prior to final action. It is suggested that the President might thereby be enabled to muster support for a nominee at first rejected, or to withdraw the nomination before final rejection. But the explanation has no application to a notification of a favorable vote. Nor is it credible that the Senate by unanimous vote would adopt a procedure designed merely to permit the exertion of influence upon a majority to change a decision already made. The construction urged is a labored one. It should not be adopted unless plainly required by the history of the rules and by the meaning which the Senate and the Executive Department in practice have given them.

The remaining portions of the opinion were devoted largely to a discussion of the history of the Rules and various changes in them, for the details of which the reader must be referred to the opinion itself.

MR. JUSTICE BRANDEIS concluded the opinion with the following comment:

> To place upon the standing rules of the Senate a construction different from that adopted by the Senate itself when the present case was under debate is a serious and delicate exercise of judicial power. The Constitution commits to the Senate the power to make its own rules; and it is not the function of the Court to say that another rule would be better. A rule designed to ensure due deliberation in the performance of the vital function of advising and consenting to nominations for public office, moreover, should receive from the Court the most sympathetic consideration. But the reasons, above stated, against the Senate's construction seem to us compelling. We are confirmed in the view we have taken by the fact that, since the attempted reconsideration of Smith's confirmation, the Senate itself seems uniformly to have treated the ordering of immediate notification to the President as tantamount to authorizing him to proceed to perfect the appointment.

The case was argued by Mr. John W. Davis on behalf of the Senate, and by Mr. George Wharton Pepper for the appellee. Attorney General Mitchell by special leave of the Court, argued the cause as amicus curiæ.

Constitutional Law—Impairment of Obligation of a Contract

The right of a creditor of a corporation to recover from a director for all moneys embezzled or misappropriated by officers of the corporation, during the director's term of office, as formerly provided by a provision of the California Constitution, is a vested right contractual in its nature, and cannot be destroyed by a repeal of the provision, subsequent to the making of a contract between such creditor and the corporation.

Coombes v. Getz, Adv. Op. 572; Sup. Ct. Rep. Vol. 52, p. 435.

This case involved a suit by the petitioner to recover judgment for an amount of indebtedness which Getz Bros. & Company, a California corporation, owed to him on an open account for goods sold. The respondent, defendant, was a director of the corporation, and the asserted liability against him was predicated upon a provision of the California Constitution, which provided that:

> "The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of office of such director or trustee."

The bill contained appropriate allegations of misappropriation and embezzlement. The trial court sustained a demurrer to the complaint, upon grounds not material to the question presented here, and while an appeal from its judgment was pending the constitutional provision referred to was repealed. The appeal was then dismissed upon the ground that the action had abated by reason of the repeal. The Supreme Court, on certiorari, reversed the judgment by a divided bench, upon the ground that the respondent was under a contractual obligation to the petitioner, which the state was forbidden to impair, by reason of the contract clause of the Federal Constitution.

The opinion of the majority was delivered by MR. JUSTICE SUTHERLAND, while MR. JUSTICE CARDOZO, delivering his first opinion since his appointment, dissented, in an opinion in which MR. JUSTICE BRANDEIS and MR. JUSTICE STONE concurred.

In the majority opinion MR. JUSTICE SUTHERLAND called attention to the fact that the State Court had proceeded upon the ground that the petitioner's right had fallen with the repeal of the provision, in virtue of the power reserved to the state to alter and repeal laws concerning corporations. The soundness of that view was denied, however, and it was pointed out that the petitioner's right here was not *purely* statutory, arising not upon the constitutional provision, but upon a contract created pursuant to that provision. In this connection MR. JUSTICE SUTHERLAND said:

> The authority of a state under the so-called reserved power is wide; but it is not unlimited. The corporate charter may be repealed or amended, and, within limits not now necessary to define the interrelations of state, corporation and stockholders may be changed; but neither vested property rights nor the obligation of contracts of third persons may be destroyed or impaired. . . . The right of this petitioner to enforce respondent's liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was not *purely* statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance

of the rule. Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the previously vested right of the creditor (which in every sense was a property right) . . . to enforce his cause of action upon the contract.

After a review of decisions dealing with that aspect of the case, consideration was given to the respondent's contention that long prior to the extension of credit by the petitioner to the corporation, the Supreme Court of California had established that the repeal of a law creating such liability as that involved here extinguishes the cause of action; and that this constituted a construction of the state law which the Court should follow and apply. The state decisions relied upon, to support this contention, were examined and found distinguishable upon the ground that they involved obligations and rights of a purely statutory rather than a contractual nature, so that the repeal of the statute prior to the perfecting of the right of action destroyed it. Pointing to the contractual elements here, MR. JUSTICE SUTHERLAND concluded his opinion as follows:

Here both parties acted. The creditor extended credit to the corporation; and his action in so doing, under the state constitutional provision, brought into force for his benefit the constitutional obligation of the director, which, by becoming a director, the latter had voluntarily assumed and, thereby, in the eye of the law, created against himself a contractual liability in the nature of a suretyship. . . Doubts which otherwise might have existed in respect of the character and effect of the transaction are no longer open. It is settled by decisions of this and other federal courts . . . that, upon the facts here disclosed, a contractual obligation arose; and the right to enforce it, having become vested, comes within the protection of both the contract impairment clause in Art. 1, § 10, and the due process of law clause in the Fourteenth Amendment, of the federal Constitution.

MR. JUSTICE CARDOZO, in his opinion, expressed the view that the petitioner's statutory right here was not vested, and was not, therefore, immune from the operation of a repeal of the statute subsequent to the creation of the right but prior to its being reduced to judgment.

In elaboration of this view, he said:

I start then with the assumption that the petitioner had a contract with a corporation secured in certain contingencies by a statutory liability. I add the assumption that the State of California was not at liberty, after the contract had been made and a cause of action had accrued thereunder, to make the security defeasible if it was indefeasible in its origin. Either the article of the Constitution prohibiting the impairment of contracts (U. S. Constitution, Art. 1, sec. 10) or the Fourteenth Amendment (which, however, is not invoked) might then stand in the way. . . The difficulty with the petitioner's case is this, that his security in its origin was not vested, but contingent. The meaning of the California constitution is whatever the courts of California declare it to be. The obligation of the petitioner's contract is whatever the law of California attached to the contract at the hour of its making. Long before that time, the Supreme Court of that State had held that under the law of California a statutory cause of action, whether penal or remedial, may be canceled or modified by repeal or amendment until it has ripened into a judgment. . . Consistent with these decisions is a provision of the Political Code: "Any statute may be repealed at any time, except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal" (California Political Code, § 327, quoted in *Moss v.* Smith, . . .). I assume for present purposes that the rule thus announced would be held of no effect if the statute and decisions declaring it had been made after Coombes became a creditor. Made as they were before that time, they were reservations or conditions limiting the statutory liability, and to be read into the statute, and hence into any contract to which the statute was an incident, as if written there in words. . . . "The claim of an irrepealable contract cannot be predicated upon a contract which is repealable." . . . Either the petitioner took his cause of action subject to such infirmities or contingencies as were attached to it by the law of the State of its creation, or he did not take anything.

This case was argued by Mr. Joseph L. Lewinson for the petitioner, and by Mr. Alfred Sutro for the respondent.

State Statutes—Regulation of Motor Vehicle Carriers

The provisions of the Motor Vehicle Act of Kansas, subjecting public motor carriers to the provisions of the public utility laws of the state and requiring them to obtain a certificate of public convenience and necessity to operate, and subjecting them to regulation by the state public service commission, including regulation as to rates and charges, are valid under the Federal Constitution.

The provisions of that Act subjecting contract carriers for hire and private commercial carriers to license fees and special taxes, based on gross ton mileage, for highway maintenance, and conferring jurisdiction on the commission to prescribe regulations for such carriers, relating to public safety on the highways, the keeping of accounts, and other matters, are also valid, in the absence of a showing that the commission, in the exercise of such jurisdiction, has promulgated regulations in violation of the constitutional rights of such carriers.

Continental Baking Co., et al. v. Woodring, et. al., Adv. Op. 816; Sup. Ct. Rep., Vol. 52, p. 595.

In this opinion by the CHIEF JUSTICE, the Court sustained the validity of the Motor Vehicle Act of Kansas. A suit in equity to enjoin the enforcement of the Act was dismissed by the district court, composed of three judges, and on appeal the decree was affirmed.

The statute contains provisions relating to the licensing and regulation of three classes of motor vehicles, "public motor carriers" of property and passengers, "contract motor carriers" of property and passengers, and "private motor carriers of property." A "public motor carrier" is defined as one transporting "for hire as a common carrier having a fixed termini or route." A "contract motor carrier" is one who is not a "public motor carrier" and is engaged in transportation "for hire as a business." "Private motor carrier of property" means one transporting "property sold or to be sold by him in furtherance of any private commercial enterprise."

It is provided that the Act shall not apply to (1) motor carriers operating wholly within any city or village of the State (2) private motor carriers operating within a radius of 25 miles beyond the corporate limits of such city or village, (3) the transportation of livestock and farm products to market "by the owner thereof or supplies for his own use in his own motor vehicle," and (4) the transportation of children to and from school.

The Act then provides that public motor carriers are common carriers within the meaning of the state public utility laws, and are subject to regulation accordingly, including regulation of rates and charges. All classes of carriers are forbidden to operate motor vehicles for compensation on public highways, except in accordance with the Act. The public service commission is clothed with power to supervise these carriers in all matters affecting their relationship with

the travelling and shipping public. The charges of public motor carriers must be just and reasonable, and such carriers must obtain certificates of convenience and necessity to operate in intrastate commerce. Contract motor carriers and private motor carriers either in intrastate or interstate commerce must obtain licenses. Applications for licenses must give information as to ownership, financial condition and equipment, and such further facts as the commission may request, but upon receipt of the information, compliance with regulations, and payment of fees, the commission must issue a license. A tax of 5/10 mill per gross ton mile is imposed on all of the defined classes of motor carriers in addition to the license fees, which is devoted to the administration of the Act and the maintenance of highways. All motor carriers are required to keep records on prescribed forms showing ton miles traveled, and other information. Every motor carrier is also required to furnish liability insurance policies approved by the Commission in such reasonable sums as the commission may deem necessary to protect the interests of the public, and binding the obligors "to pay compensation for injuries to persons and loss of or damage to property resulting from negligent operation of such carrier." No bonds or licenses may be required in addition to those prescribed by the Act. The commission is empowered to promulgate rules as to maintenance of vehicles in a safe and sanitary condition, and as to qualifications and hours of service of operators, and for reporting accidents. Violation of the Act or of any order of the commission is made a misdemeanor.

The appellants are "private motor carriers of property" operating bakeries in Kansas and other states, and by their own trucks make their deliveries to customers. They asserted that the statute, by its obligations and classifications violates the due process and equal protection clauses of the Fourteenth Amendment, the provision as to the privileges and immunities of citizens, and the commerce clause of the Federal Constitution.

In upholding the validity of the statute the opinion of the district court was first referred to for a statement of the general situation to which the Act was directed. That court said:

> "The State of Kansas has constructed at great expense a system of improved highways. These have been built in part by special benefit districts and in part by a tax on gasoline sold in the State and by license fees exacted of all resident owners of automobiles. These public highways have become the roadbeds of great transportation companies, which are actively and seriously competing with railroads which provide their own roadbeds; they are being used by concerns such as the plaintiffs for the daily delivery of their products to every hamlet and village in the State. The highways are being pounded to pieces by these great trucks which, combining weight with speed, are making the problem of maintenance well nigh insoluble. The Legislature but voiced the sentiment of the entire State in deciding that those who daily use the highways for commercial purposes should pay an additional tax. Moreover, these powerful and speedy trucks are the menace of the high ways."

The fundamental distinction between this Act and those held invalid in other cases was noted, that this does not attempt to convert private carriers into public carriers by legislative mandate.

> It is apparent that Kansas, in framing its legislation to meet these conditions, did not attempt to compel private carriers to become public carriers. The legislature did not purport to put both classes of carriers upon an identical footing and subject them to the same obligations. . . It recognized and applied distinctions. "Public" or common carriers, and not private carriers, are required to obtain certificates of public convenience and necessity. The former, and not the latter, are put under regulations as to fares and charges. While, with respect to certain matters, both are placed under the general authority given to the public service commission to prescribe regulations, it does not appear from the bill of complaint that any regulation has been prescribed, or that the commission has made any order, of which private carriers may properly complain.

The obligations directly imposed by the Statute on private carriers, were then considered in relation to the objections raised by the appellants. The requirements as to obtaining licenses, paying fees for highway maintenance, and filing liability insurance policies (construed to require protection of the public using the highways, rather than passengers or cargoes carried), were found valid, as to private carriers in both interstate and intrastate commerce, where no discrimination is made.

> Requirements of this sort are clearly within the authority of the State which may demand compensation for the special facilities it has provided and regulate the use of its highways to promote the public safety. Reasonable regulations to that end are valid as to intrastate traffic and, where there is no discrimination against the interstate commerce which may be affected, do not impose an unconstitutional burden upon that commerce. Motor vehicles may properly be treated as a special class, because their movement over the highways, as this Court has said, "is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves."

No objection was found to the tax on the score of uncertainty because of the exemptions of motor carriers operating wholly within a city or village, or of private motor carriers operating "within a radius of twenty-four miles beyond the corporate limits" thereof.

> This objection is distinct from that of unconstitutional discrimination, shortly to be considered. We perceive no uncertainty by reason of the first exemption which definitely applies to cases of operation exclusively within the limits of a city or village. As to the second exemption, the state authorities assert, and it is not denied, that in the administration of the Act the public service commission has taken the exemption to mean that "so long as private carriers operate within a radius of twenty-five miles of their home city or base they are not subject to the payment of the fee. Even though they have made trips outside the twenty-five mile radius, which subjects them to the law and to the payment of tax for such trips, they are still not subject to the payment of a tax for trips made entirely within the twenty-five mile zone." The District Court expressed the opinion that the provision "can and should be construed as intending to exempt from the tax those carriers who either have an established place of business or an established delivery point, with trucks domiciled in any city, and that such trucks may operate in that city and within a twenty-five mile radius free of any tax," and the court said that it agreed with the construction of the commission that "if such a truck goes beyond the twenty-five mile limit," "only the excess is taxable." 55 F. (2nd) at p. 356. On this construction, it cannot be said that there is a fatal defect in definition. The tax itself is certain, as in the process of laying the tax it is necessarily made certain before any penalty can be imposed for non-payment. The tax is to be assessed and collected on the basis of gross ton miles and this mileage is to be computed in a prescribed manner. When the tax is assessed, the ordinary remedies will be available for contesting it, if the assessment is not in accordance with the law. No impropriety in assessment or in collection as to these appellants, or denial of remedy, is disclosed. Nor is the amount of the tax, which the State could lay in its discretion for the lawful purposes declared, shown to be unreasonable.

The provisions conferring on the commission power to supervise accounts, schedules, service and method, to prescribe accounts and generally to supervise and regulate all carriers were upheld, in the absence of any showing of action by the commission in-

volving a violation of the constitutional rights of the appellants.

> This is not a case like that of *Smith v. Cahoon,* supra, [283 U. S. 553], where the requirements of the statute itself, as distinguished from action of the state commission under it, had such an objectionable generality and vagueness as to the obligations imposed upon private carriers that they provided no standard of conduct that it was possible to know and exposed the persons concerned to criminal prosecution before any suitably definite requirement had been prescribed. In the instant case, the statute itself clearly distinguishes in fundamental matters between the obligations of public and private carriers and places upon the latter certain requirements which the State had power to impose. Whatever uncertainty may exist with respect to possible regulations of the commission will be resolved as regulations are promulgated. If any of these transcend constitutional limits, appellants will have their appropriate remedy. The provision as to keeping records and furnishing reports and information and as to maintaining uniform methods of accounting, may in the case of private carriers of property be assumed, until the contrary appears, to have relation, as the state authorities assert, to the determination of the amount of the tax to which the private carriers are properly liable. The general grant of authority to the public service commission over all the carriers described, including both public and private carriers, in all matters affecting their relationship with the traveling and shipping public, we think should be taken distributively in the light of the context and of the manifest distinctions in the relation of different sorts of carriers to the public. The distinction made by the statute between public and private carriers with respect to the obtaining of certificates of public convenience and necessity, and as to rates and charges, indicates the intention to keep separate the special responsibilities of public carriers from the more limited but still important duties which are owing as well by private carriers, in protecting the public highways from misuse and in insuring safe traffic conditions, and there is no reason to conclude that the authority given to the commission will not be viewed and exercised accordingly. We agree with the District Court that the last clause of section 5, providing that "all laws relating to the powers, duties, authority and jurisdiction of the public service commission over common carriers are hereby made applicable to all such motor carriers except as herein otherwise specifically provided," applies to public and not to private carriers.

The remaining portions of the opinion were devoted to a discussion of the grounds upon which the exemptions from the operation of the Act were sustained. Of these the exemption relating to the transportation of livestock and farm products to market is of special interest, in contrast with provisions held invalid in *Smith v. Cahoon.*

> In *Smith v. Cahoon, supra,* the state statute, which applied to all carriers for compensation over regular routes, including common carriers, exempted from its provisions "any transportation company engaged exclusively in the transporting of agricultural, horticultural, dairy or other farm products and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point en route to primary market, or to motor vehicles used exclusively in transporting or delivering dairy products." The stated distinction was thus established between carriers, and betweeen private carriers, notwithstanding the fact that they were "alike engaged in transporting property for compensation over public highways between fixed termini or over a regular route." The Court was unable to find any justification for this discrimination between carriers in the same business, that is, between those who carried for hire farm products, or milk or butter, or fish or oysters, and those who carried for hire bread or sugar, or tea or coffee, or groceries in general, or other useful commodities."
>
> The distinction in the instant case is of a different sort. The statute does not attempt to impose an arbitrary discrimination between carriers who transport property for hire, or compensation, with respect to the class of products they carry. The exemption runs only to one who is carrying his own livestock and farm products to market or supplies for his own use in his own motor vehicle. In sustaining the exemption, the District Court referred to the factual basis for the distinction. "The legislature knew," said the court, "that as a matter of fact farm products are transported to town by the farmer, or by a non-exempt "contract carrier" employed by him. The legislature knew that as a matter of fact the use of the highways for the transportation of farm products by the owner is casual and infrequent and incidental; farmers use the highways to transport their products to market ordinarily but a few times a year. The legislature rightly concluded that the use of the highways for carrying home his groceries in his own automobile is adequately compensated by the general tax imposed on all motor vehicles.

The case was argued by Mr. Charles R. Wilke and Mr. John C. Grover for the appellants, and by Mr. Walter T. Griffin for the appellees.

State Statutes—Regulation of Motor Vehicles

The Motor Vehicle Act of Texas, prescribing limitations on the size, weight and load of motor vehicles operating over the highways of the State is valid as an exercise of the police power of the State to prevent the wear and hazards due to the excessive size of vehicles and weight of load.

Sproles, et al. v. Binford, Adv. Op. 827; Sup. Ct. Rep., Vol. 52, p. 581.

This case involved the validity of provisions of the Motor Vehicle Act of Texas, prescribing the size and weight of vehicles and loads which may be operated or transported over highways of the state. A district court composed of three judges dismissed a bill of complaint brought to restrain enforcement of the provisions. On appeal the decree was affirmed by the Supreme Court in an opinion by the CHIEF JUSTICE.

The grounds on which the Act was challenged were that its provisions violate the due process and equal protection clauses of the Fourteenth Amendment and also the commerce and contract clauses of the Federal Constitution. The challenged provisions are contained in footnotes to the opinion and the opinion itself contains a summary of them.

By the terms of the Act, Section 2, the operation of any vehicle, as defined, exceeding the stated limitations of size, or not constructed or equipped as required, and also the transportation of any load exceeding prescribed weights and dimensions is forbidden. But oversize or overweight commodities, which cannot reasonably be dismantled, may be transported, and oversize and superheavy equipment may be operated under permit, for 90 days, from the State Highway Department, provided that hauls under permit shall be made by the shortest practicable route.

Section 3 limits the width of a vehicle, including load, to 96 inches, height to 12½ feet, length to 35 feet, and the length of combination of vehicles to 45 feet. It forbids the transportation as a load, or as part of a load, of any commodity in containers having more than 30 cubic feet and weighing more than 500 pounds. Where there are more than 14 of such containers in the load, the load is limited to 7,000 pounds. Implements of husbandry, including machinery used solely for drilling water wells, and highway building and maintenance machinery temporarily propelled or moved upon public highways are exempted from the limitations as to size.

Section 7 prohibits "commercial motor vehicles" (defined as one designed or used for transporting property) from operating outside any city or town with a load exceeding 7,000 pounds, and provides that no motor vehicle (including passenger buses) shall operate outside a town or city with a greater weight than 600 pounds "per inch width of tire upon any wheel concentrated upon the surface of the highway."

Section 5 has been amended by a provision to be known as Section 5b to the effect that the foregoing

limitations as to length, weight of loads, and height of loads shall not apply to vehicles,

> "when used only to transport property from point of origin to the nearest practicable common carrier receiving or loading point or from a common carrier unloading point by way of the shortest practicable route to destination, provided said vehicle does not pass a delivery or receiving point of a common carrier equipped to transport such load," or when used to transport property "from point of origin to point of destination" when the latter is less distant from the point of origin "than the nearest practicable common carrier receiving or loading point equipped to transport such load." This provision is subject to the limitation that, except by special permit, as provided in the Act, the length of such vehicles shall not exceed 55 feet, or the weight of such loads 14,000 pounds, and also that the requirement as to the "weight per inch width of tire" shall still be applicable.

The opinion, after summarizing the comprehensive findings of fact made by the district court, discusses the questions of law raised by the appellants. The first question considered was that involved in the appellants' contention that the limitation of net load to 7,000 pounds is arbitrary. They urged that when gross weight is restricted by the 600 pounds per inch of tire spread upon the highway, a margin is left sufficient to carry cargoes greater than 7,000 without causing damage; and that damage from overweight can be prevented only by regulations as to gross load with provision for proper distribution through axles and wheels to the surface of the highway. The Court, however, rejected this contention, in view of the wide discretion which the states are permitted to exercise in the field of highway regulation.

> In exercising its authority over its highways the State is not limited to the raising of revenue for maintenance and reconstruction, or to regulations as to the manner in which vehicles shall be operated, but the State may also prevent the wear and hazards due to excessive size of vehicles and weight of load. Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure. . . When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome. . . Applying this principle, this Court in *Morris v. Duby*, 274 U. S. 135, sustained the regulation of the Highway Commission of Oregon, imposed under legislative authority, which reduced the combined maximum weight in the case of motor trucks from 22,000 pounds, which had been allowed under prior regulations, to 16,500 pounds. . . The requirement in *Morris v. Duby*, related to the gross load limit, but we know of no constitutional distinction which would make such legislation appropriate and deny to the State the authority to exercise its discretion in fixing a net load limit. We agree with the District Court that the limitation imposed by section 5 of the statute does not violate the due process clause.

Objection to the limitations as conflicting with the commerce clause was also thought to be without foundation. In this connection the Court observed that the limitation does not discriminate against interstate commerce, and that in the absence of federal legislation dealing with the subject, the states are free to act within the field.

> In the instant case, there is no discrimination against interstate commerce and the regulations adopted by the State, assuming them to be otherwise valid, fall within the established principle that in matters admitting of diversity of treatment, according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act. . . As this principle maintains essential local authority to meet local needs, it follows that one State cannot establish standards which would derogate from the equal power of other States to make regulations of their own.

The contention that the statute operates to impair the obligations of contracts was disposed of by reference to the principle that contracts relating to matters within the police power are deemed to have been made in contemplation of the regulatory power of the State.

> Contracts which relate to the use of the highways must be deemed to have been made in contemplation of the regulatory authority of the State. With respect to the power of Congress in the regulation of interstate commerce, this Court has had frequent occasion to observe that it is not fettered by the necessity of maintaining existing arrangements which would conflict with the execution of its policy, as such a restriction would place the regulation of interstate commerce in the hands of private individuals and withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements. . . The same principle applies to state regulations in the exercise of the police power.

Among objections considered in relation to Section 5b a most important one is that based upon the assertion that it was designed to favor transportation by railroad as against transportation by motor truck, and is, therefore, violative of the equal protection clause. The existence of such a motive would not render the classification invalid, in the opinion of the Court.

> If this was the motive of the legislature, it does not follow that the classification as made in this case would be invalid. The State has a vital interest in the appropriate utilization of the railroads which serve its people as well as in the proper maintenance of its highways as safe and convenient facilities. The State provides its highways and pays for their upkeep. Its people make railroad transportation possible by the payment of transportation charges. It cannot be said that the State is powerless to protect its highways from being subjected to excessive burdens when other means of transportation are available. The use of highways for truck transportation has its manifest convenience, but we perceive no constitutional ground for denying to the State the right to foster a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain. This is not a case of a denial of the use of the highways to one class of citizens as opposed to another or of limitations having no appropriate relation to highway protection. It is not a case of an arbitrary discrimination between the products carried, as in the case of *Smith v. Cahoon*, 283 U. S. 553, 567. The provision of section 7 permitting increased loads under the stated conditions applies to all persons and to all products. The discrimination is simply in favor of short hauls and of operations which, as the District Court found, are confined to small areas and greatly reduce the danger of traffic congestion and highway casualties. The limitation of the length of vehicles, covered by the exception, to 55 feet, and of the weight of their loads to 14,000 pounds, must be taken to be within the legislative discretion for the same reasons as those which were found to sustain the general limitation of size and weight to which the exception applies.

The opinion was concluded with a discussion of the appellants' contention that the limitation of Section 5 is arbitrary for failure to include passenger busses, and the contention that there was an unconstitutional delegation of power to the Highway Department in empowering it to relax the limitations as to overweight or oversize commodities that "cannot be reasonably dismantled." Both of these contentions were rejected.

The case was argued by Mr. Charles I. Francis, Mr. Frank H. Rowlings, and Mr. La Rue Brown for the appellants, and by Mr. Elbert Hooper for the appellees.

SURFACE OWNERS AND THE RIGHT OF FLIGHT

Necessity of Finding Some Method by Which Aviation May Be Lawfully Carried on without Undue Interference with Legitimate Interest of Surface Owners—Decisions of Two Appellate Courts of High Authority Present Two Fundamentally Different Methods of Legalizing Flight by Aeroplane—Practical Reasons for Preferring View of the Massachusetts Court, Etc.

By Francis H. Bohlen
Professor of Law, University of Pennsylvania

THE invention of the aeroplane and the rapid development of aviation as a recognized means of transportation has made acute the previously academic problem of determining the extent to which the ownership of the surface of the land carries with it the ownership of the superincumbent air space. It has become a matter of immediate and pressing necessity to find some method by which aviation may be lawfully carried on without unduly interfering with the legitimate interests of the surface owner. While there had been many discussions by essayists and text writers no American appellate court had, until two years ago, been required to deal with these problems. Since then two appellate courts of high authority have recognized the lawfulness of flight without the consent of the surface owner. However, the conditions under which planes may be lawfully flown and the bases upon which the legality of flight is sustained are essentially different in the two cases.

In Smith v. New England Aircraft Corp., 270 Mass. 511, 170 N. E. 385 (1930), the Supreme Judicial Court of Massachusetts adopted the view that "private ownership of air space extends to all reasonable heights above underlying land." A strong opinion was expressed that a State in the exercise of its police power or the United States in the exercise of its power to regulate interstate commerce might grant a privilege of flight over land at heights at which and under conditions under which the flight does not unreasonably interfere with the rights of the surface owner. The flight under 500 feet, the altitude at which the Massachusetts statute permitted flying over privately owned land while taking off and landing, was held to be a trespass but the injunction was refused in accordance with the Massachusetts practice, because the flight although a trespass was not shown to be injurious to the surface owner's enjoyment of his land.

In Swetland v. Curtiss Airport Co., 41 Fed. 2nd. 929 (1930), Hahn, District Judge, refused to enjoin the operation of the airport because of the noise or glaring lights which were likely to be incidental to the subsequent growth and full use of the airport when completed. However, he did enjoin the flight below 500 feet, which was the altitude at which flight was permitted over land, other than that in congested parts of cities, towns or settlements, by the regulations of the Department of Commerce which had been adopted by a statute of the State of Ohio. In all essential particulars the opinion of Hahn, J., is in substantial accord with that of Rugg, C. J., in Smith v. the New England Aircraft Corporation. The Circuit Court of Appeals of the Second Circuit, however, so modified the injunction as to enjoin the defendant from operating the airport as then located because its normal operation had been shown to involve much annoyance to the neighboring owner from the noises made by the normal low flying over his land and by the taking off and landing of aeroplanes on the field, but deleted so much of the injunction as forbade the flying over the plaintiff's land at less than 500 feet. The principal opinion was delivered by Moorman, Circuit Judge. He repudiated the traditional view that an owner of the surface also owns any part of the air space above it merely because he owns the surface. According to Judge Moorman the surface owner has only a right to occupy any part of the air above his land and acquires possession and ownership by so doing. Thus his ownership of the air extends to only so much of it as he has reduced to possession by use or building, although there is a curious remnant of ownership sufficient to support his injunction against persistent intrusions upon that part of the air space which may become usable in the future, if such intrusions are so continuous that they may ripen into an easement.[1] Unless the flight is within the occupied air space or is of such a character as to be likely to create an easement interfering with the future use of the potentially usable air space, the surface owner has no remedy, except against flights which are so conducted as to unreasonably interfere with the owner's enjoyment of the surface and the appropriated air space and thus become a nuisance. Not only this, but to be a nuisance to residential property the flight must make the surface physically uncomfortable for residential use. Furthermore, the fact that the flight is at an altitude forbidden by statute does not make the flight a nuisance for "in our view that regulation" (forbidding flight below 500 feet) "does not determine the rights of the surface owner, either as to trespass or nuisance." In these last two particulars Judge Moorman's opinion seems open to serious criticism. In determining the existence of a nuisance he lays undue stress upon the fact that the plaintiff's land was made physically uncomfortable for residential use. If by this he meant to

1. Hickenlooper, J., concurred in result but refused to concur in "that portion (of the majority opinion) which seems to me to create a distinction between flights in the upper and lower strata founded upon reasonable expectation of use." It will be noted that of the ten appellate judges who considered the questions in these two cases only two regarded the surface owner's right of possession as limited to the air space which he had appropriated by occupancy.

imply that physical discomfort was necessary to constitute a nuisance, his concept of the ambit of nuisance is far more restricted than the cases warrant. After all the essence of nuisance to land is unreasonable interference with the owner's enjoyment of life localized in the particular land. It should be, and in many cases is, recognized as immaterial that the unreasonable discomfort comes from the apprehension of danger or other normal mental reaction rather than from smoke, dust or odors which cause physical discomfort. A low flying aeroplane is obnoxious to the normal landowner not merely because he feels it is an outrage on what he assumes to be his proprietorship of the air, but because he feels endangered by it, a feeling which experience has shown to have at least some justification. There are innumerable cases in which the nuisance character of the defendant's conduct lies in the mental discomfort which comes from similar fears of possible future injury. The storage of dynamite in too close propinquity to residential land is a nuisance, yet it does not make the land physically uncomfortable; the fear of possible danger in the event of its explosion is enough. The second criticism is more serious. He cites no authorities in support of his view that the regulation which prohibited flight under 500 feet did not determine the rights of the surface owner either as to trespass or nuisance. His statement is contra to innumerable cases in which statutes or even ordinances, enacted in whole or in part to protect the private interests of individual citizens and not merely to effectuate some purely public policy or purpose, have been held to create a private right in those for whose protection the enactment was passed.[2] It can hardly be contended that the aviation rules adopted by the State of Ohio were not intended to protect the interests of the owners and occupiers of the surface land. The very purpose of requiring flights to be made at a reasonable altitude is to give the maneuvering room necessary to enable planes to make a "reasonably safe emergency landing," (as is required when flight is over a congested district) and so to prevent their crashing on the surface to the very probable injury of life and property thereon, and, in addition, to protect the occupiers of the surface against the discomfort and terror inseparable from low flights.

It is obviously necessary that some method shall be found whereby a fair adjustment may be made between the legitimate interests of aviation and the public which it serves and the traditional interests of the surface owner. It is unthinkable that a churlish landowner of a large tract of land should be able to block air communication between important centers of population by injunction or that an avaricious owner could utilize his right in the air above his land as a means of blackmailing an aviation company into paying an exorbitant price for his consent to the passage of its planes. The two cases above discussed present two fundamentally different methods by which flight by aeroplanes may be legalized. The question is to determine which of the two methods is preferable. The Smith case recognizes the traditional right of ownership *usque ad coelum* but makes it subject to a legislatively created or defined privilege of such passage as is necessary to secure the public interest in transportation by air. The decision of the Circuit Court of Appeals in the Swetland case substantially denies all right in the unoccupied air space, such air space being neutral territory in which all flights are permissible which do not constitute a nuisance to the enjoyment of the surface. In the Swetland case Judge Moorman speaks of the traditional concept of ownership "to high heaven," as being the creature of a maxim itself imbedded into the body of the law by certain early cases. It may be doubted whether this concept is the creature of a maxim. It is more nearly true that the maxim, if it can be so called, is merely a convenient generalization of a concept so ancient as to form one of the traditional assumptions of all landowners. Like all generalizations it may prove too broad to fit the needs of modern life and may, therefore, require modification or abandonment. It seems clear that one or the other is necessary. Which shall it be? It is submitted that, if satisfactory results can be obtained by modification, it would be unwise to abandon altogether a concept which is no longer merely legal but which is shared by the great majority, if not all, of those who own surface land. It is further submitted that the results attained by so modifying the broad generalizations as to make the ownership of the air subject to a privilege of passage by areoplanes will not only be as satisfactory a solution of the problem but a far more workable and fair one. Ample analogies can be found for such a privilege. The right of navigating a stream, the bed of which is entirely within the boundaries of privately owned land, affords an analogy so close as to be substantially complete. Almost as close an analogy is furnished by the right of detour over private land when a public highway is impassable. Both of these privileges are based upon the public interest in intercommunication between locality and locality, the same public interest which alone can be successfully urged as requiring the privilege of flight. There can certainly be no greater constitutional objection to the recognition of a privilege which is to this extent in derogation of the surface owner's rights in the air space above it than to the complete denial of all ownership in the unoccupied air.

Apart from this, however, there are several very practical reasons for preferring the Massachusetts method. In the first place only such flights as are in the furtherance of the public interest in air transportation are made lawful, whereas under the Swetland case all sorts and kinds of flights for purely private purposes would be legalized unless the owner could show that they made the enjoyment of his land physically uncomfortable. Yet no public interest is served by stunt flying, flying for advertising purposes or for the production of moving pictures. There is no reason why the surface owner's traditionally recognized interests should be made subordinate to these purely private enterprises. If such flights are desired, the consent

2. See Exner v. The Sherman Construction Co., 54 Fed. 2nd 510 (C. C. A. 2nd Circuit 1931) in which there is a statement by Augustus Hand, J., to the effect that where an ordinance forbade the storage of dynamite within a stated distance from inhabited buildings the storage was a nuisance to all persons owning or occupying buildings within the protected area and could be enjoined by them as such. This was dictum since the plaintiff's property was situated outside of the protected zone. Swan, J., however, sustained the plaintiff's right to recover on the ground that the storage of dynamite in violation of the ordinance was actionable as a nuisance even by those who owned property outside the protected zone and who, therefore, were not within the class for whose peculiar protection the ordinance was passed.

of the owner should be obtained and if necessary paid for. There is no greater reason to allow the air above one's land to be exploited for private gain than to permit a showboat to moor for exhibition purposes in a navigable stream within private boundaries.

Again under the Massachusetts technique the aviator has the burden of proving that his flight is privileged. Where, as is the case in all but a very few states, there is legislation which fixes the legal height of flight, this puts the burden of proof upon the only person who has any ability to ascertain with even approximate accuracy the height at which the particular flight or flights are made. Every aeroplane is equipped with instruments which tell with reasonable accuracy the height of the plane at every moment. The aviator can know at what height he is flying over each particular piece of land and since cases are not litigated unless the flight is persistent or near an airport the aviator's attention can readily be centered upon the height at which he flies over the area in question. On the other hand, the surface owner can at best make a rough estimate as to the height at which a plane passes over his land. All other things being equal the burden of proving any legally operative fact is best placed upon him who has the exclusive or greatly superior ability to prove it.

Finally, the Massachusetts method is likely to have the following highly important advantage. Unless history fails to repeat itself, it is safe to predict that the aviation interests, highly organized and keenly conscious of their own peculiar needs and interests as they are, will exert a constant pressure upon legislatures, boards or commissions, to whom the regulation of aviation is committed, to obtain rules and regulations which will permit them the utmost latitude of profitable flight. Against this highly organized group the unorganized body of landowners will be comparatively helpless. Today organization and not numbers means political power and governmental favors. Against such a chance the surface owner must look to the courts for protection. If the surface owner is recognized as being also the owner of the air, subject only to a privilege of passage by aeroplanes, the question of the reasonable character of the privilege granted by the legislature, or by an aeronautical board as its delegate, is more readily presented in a form likely to secure the legitimate interests of the surface owners. Frankly the writer has no fear that either legislatures or courts will not be sufficiently sensitive to the legitimate needs of aviation. His fear is that in their enthusiasm for this new method of transportation legislatures and boards may overlook the equally legitimate interests of surface owners.

In one particular aviation presents a peculiar problem. Except for an almost negligible minority aeroplanes today require a very considerable space to attain an altitude at which they can be flown without mental or physical discomfort to adjacent residential property. It is certain that if 500 feet is fixed as a minimum altitude the area of airports must be very great, and since airports must be within convenient distance from the cities which they serve, it may be very difficult to obtain so large a tract. Here again the Massachusetts court and the District Court in the Swetland case indicate a different solution of the difficulty from that which is, perhaps vaguely, implied in the opinion of the Circuit Court of Appeals. In the District Court, Hahn, J., 41 Fed. 2nd. 942, citing Smith v. New England Aircraft Company said: "Until the progress of aerial navigation has reached a point of development where airplanes can readily reach an altitude of 500 feet before crossing the property of an adjoining owner, where such crossing involves an unreasonable interference with property rights or with effective possession, owners of airports must acquire landing fields of sufficient area to accomplish that result. In such instances, to fly over the lands of an adjoining owner at lower altitudes, the owners of airports must secure the consent of adjoining property owners, or acquire such right by condemnation when appropriate enabling statutes are enacted." On the other hand, Moorman, J., appears to suggest that if the airport company could not find another site on which their operations would not unreasonably interfere with the enjoyment of the neighboring land, the adjacent landowners might have to submit to great annoyance in the interest of the public value of aviation. Since, however, it was shown that the defendants had acquired another site the court said, "Considering, therefore, the balance of convenience the defendants are not entitled to use the property as they now contemplate." It may be that Judge Moorman did not intend any such implication as that which has been drawn from his language. If, however, the implication is a fair one, it is certainly extraordinary to recognize a right of expropriation without compensation in an activity which has not yet been recognized as of sufficient public importance to warrant the conferring upon it of the right of eminent domain, under which the necessary air rights could be condemned, but only upon the payment of their value.

At all events one thing seems certain, "Who shall decide when doctors disagree?" When courts are in fundamental disagreement in a matter of immense public importance it is for legislation to decide between them and, in a matter dealing with a means of transportation by which thousands of miles are covered in a day, it is essential that the legislation shall be uniform, at least throughout the United States. Two committees are charged with the task of preparing universal aviation laws. One such act has already been prepared by the Aeronautical Committee of the Commissioners for Uniform State laws and has been enacted in several states. A committee of the American Bar Association is preparing a similar act of which a tentative draft was presented at the 1931 meeting of the Association. It, in substance, embodied the view subsequently expressed in Judge Moorman's opinion. To many of us it seemed to give no adequate protection to the legitimate interests of the surface owners. The committee is still at work upon the final draft. There is reason to hope that it will be materially changed and will secure a freedom of aviation sufficient to satisfy the public need of air transportation while at the same time adequately guarding the legitimate interests of the surface owner. It is to be hoped that the section of the

act prepared by the Uniform State Commissioners, which recognized the right of the surface owner to the air space above it, will be inserted in the committee's final draft and that the section legalizing flight over privately owned land shall be so drafted as to make lawful only passage through the air space and not all flight for any purpose. Furthermore such passage should be made lawful only if it is at the altitude and under regulations promulgated by the state aviation act or by the state aeronautical authorities and if so conducted as not to unreasonably interfere with the landowner's enjoyment of the surface and the air above him and not to be unreasonably dangerous to persons and property thereon or to seriously offset the value of the land. If the act is so framed it will adopt the views of the Massachusetts Supreme Judicial Court and of Judge Hahn in the District Court of the United States. Even though the omitted section be not inserted, the fact that the Act would make flight legal under the conditions named would indicate that a privilege of passage in derogation of the surface owner's exclusive possession of the air is being conferred, in analogy to the privilege of navigating a navigable stream upon private property. However, in the writer's opinion it is important that that which would thus be implicit should be made explicit by the insertion of this omitted section. If this is done there can be no doubt as to the precise basis upon which flying is permitted. The danger that the courts of different jurisdictions will take different positions on the matter will be largely if not entirely eliminated. The right of flight will be obviously a privilege and as such those who seek its protection will be required to prove themselves within its terms. An act so drafted will give to each state the power to determine the conditions under which aeroplanes may be lawfully flown; a power which, however, will be susceptible to scrutiny by the courts to see that the interest in air transportation is not given an undue preference to the interest of the far more numerous landowners in having their occupancy of the surface preserved not only from physical discomfort caused by noise, odors and dust but also from the mental discomfort and normal uneasiness too frequently caused by inconsiderate airmen flying at unnecessarily low altitudes over residential property.

A Judge Who Sat Blindfolded on the Bench

(From St. Louis Post-Dispatch, May 1)

An extraordinary personality was commemorated yesterday in the presentation to Federal District Court by the St. Louis Bar Association of a portrait of its first Judge, James Hawkins Peck, who was on the bench here from 1822 to 1836.

Through fear of blindness, Judge Peck sat on the bench blindfolded, like an allegorical figure of Justice. His quarrel with another famous lawyer of his time led to his impeachment and subsequent exoneration and to Congressional limitation of the acts to be construed as contempt. Though he engaged in a street fight over a woman, he never married, and the only person to wish that he had, so far as the record shows, was literally his worst enemy.

The formal hanging of the portrait marked the culmination of extended search by Federal Judge Charles B. Davis, who found, in studying the history of the court, when he took the bench eight years ago, a brief note on Judge Peck's bizarre career in office. Scrutiny of the portraits in the courtroom on the third floor of the Federal building, sometimes with the aid of magnifying glasses, disclosed that Peck alone, of all the Judges since Missouri became a State, was not included.

Washington Letter

1226 National Press Bldg.,
Washington, D. C., July 9, 1932.

Bills Approved by the President

ON June 29th, President Hoover approved H. R. 10587, to provide for alternate jurors in certain criminal cases. (Public Law No. 209.) The purpose of this law is to prevent mistrial of cases wherein a juror dies or becomes so ill as to be unable to continue the performance of his duties.

On the same day, the President approved H. R. 10599, to fix the date when sentence of imprisonment shall begin to run, providing when the allowance to a prisoner of time for good conduct shall begin to run, and further to extend the provisions of the parole laws. (Public Law No. 210.)

On June 30th, the President approved H. R. 11639 authorizing the Secretary of the Interior, in his discretion, to extend Oil and Gas Prospecting Permits for an additional period of three years, on such conditions as he may prescribe. (Public Law No. 217.)

On May 7th, the President approved S. 3953, an act authorizing the Secretary of the Interior to extend potash prospecting permits issued under the Act of February 7, 1927, for a period not exceeding two years, upon a showing of satisfactory cause. (Public Law No. 126.)

On July 5th, the President approved H. R. 7513, an Act to provide for the appointment of a public defender for the Canal Zone.

A Conservation Measure

On June 27th, the Senate passed S. 4509, to further amend the Act of Feb. 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain. The measure provides that:

"In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production of coal, oil, and/or gas under any lease granted under the terms of this Act, any payment of acreage rental prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto: Provided, That nothing in this Act shall be construed as affecting existing leases within the borders of the naval petroleum reserves and naval oil-shale reserves."

Bankruptcy Legislation

On June 22nd, Senator Hastings introduced S. 4921 and S. 4923 to amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1889, and Acts amendatory thereof and supplementary thereto. The first bill adds a new section to be numbered 73 and provides a method for corporate reorganization through the filing of a petition or, before adjudication, in an involuntary proceeding, an answer, stating that the corporation is insolvent, or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The second bill proposes to amend Chapter 8, Section 12, by adding at the end of the section a provision setting forth a method whereby a debtor, unable to satisfy his debts and being desirous to obtain a delay in time of payment of the sums he owes, may file a petition notifying his creditor, and submit a proposal to pay in a limited time the whole or a

part of his debts. On June 23d, these bills were referred to a sub-committee of the Senate Judiciary Committee, composed of Senators Hastings, Hebert, and Bratton.

A similar bill (H. R. 12753) was introduced in the House of Representatives on June 21st by Representative McKeown.

Representative LaGuardia, on June 24th, introduced the following bills: H. R. 12786, to prohibit the appointment of corporations as trustees in bankruptcy; H. R. 12787, to amend the Judicial Code prohibiting the appointment of corporations as receivers in equity; H. R. 12788, to prohibit the appointment of corporations as receivers in bankruptcy.

Representative Ludlow, on July 5th, introduced H. R. 12895, to abolish the appointment of a receiver for a debtor and the placing of a debtor's property in hands of a receiver, while insolvent, as acts of bankruptcy, and for other purposes. The measure reads as follows:

"That clause (5) of subdivision (a) of Section 3 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, as amended (U. S. C. Supp. V. Title 11, sec. 21), is hereby amended by striking out 'or, while insolvent, a receiver or a trustee, has been appointed, or put in charge of his property;' so that such clause will read as follows:

"'(5) made a general assignment for the benefit of his creditors;'

"Sec. 2. The amendment made by the first section of this Act shall not apply to cases in which an adjudication of bankruptcy has been made prior to the date of enactment of this Act."

Part 3 of the joint hearings before the subcommittees of the Committees on the Judiciary, Congress of the United States, relating to a uniform system of bankruptcy, has been printed. This part of the hearings contains the statement made before the subcommittees on May 4th, by Jacob M. Lashly, Chairman of the bankruptcy committee of the American Bar Association.

Other Measures Introduced

On June 16th, Senator Capper introduced S. 4896, and Representative Mary Norton introduced H. R. 12680, both bills being to provide a code of insurance law for the District of Columbia. The bills were referred to the Committee on the District of Columbia of the Senate and House of Representatives.

On June 21st, Representative Rayburn introduced H. R. 12739, to regulate the transportation of passengers and property in interstate and foreign commerce by motor carriers operating on public highways, and for other purposes. The bill was referred to the House Committee on Interstate and Foreign Commerce.

On June 27th, Representative Hogg of Indiana, introduced H. R. 12816 to discontinue payment of interest on judgments against the United States and amounts allowed on account of taxes illegally collected. The measure provides:

"That hereafter no interest for any period after date of judgment shall be allowed or paid on the amount of any judgment against the United States, or any officer or agency thereof, notwithstanding the provisions of any other Act or the provisions of the judgment itself; nor shall any interest be included in or allowed on any amount refunded, credited, or allowed on account of any tax illegally collected."

On July 8th, Representative Disney introduced H. J. Res 466, which reads as follows:

"That section 319 of the Act entitled 'An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes,' approved June 30, 1932, shall not apply to any judgment against the United States or overpayment in respect of any internal-revenue tax for which a check had been issued by the duly authorized disbursing officer prior to the date of the enactment of such Act.

Section 319, above referred to, relating to rate of interest on judgments and overpayments, which the Joint Resolution seeks to amend, reads as follows:

"Hereafter the rate of interest to be allowed or paid shall be 4 per centum per annum whenever interest is allowed by law upon any judgment of whatsoever character against the United States and/or upon any overpayment in respect of any internal-revenue tax. All laws or parts of laws in so far as inconsistent herewith are hereby repealed."

On July 6th, Representative Lewis introduced H. R. 12916, to regulate interstate and foreign commerce in coal; stabilize the coal-mining industry; provide for cooperative marketing; secure prices just to operators and consumers and fair living and working conditions for the miners concerned; to create a coal commission; levy taxes on coal to provide for the general welfare; and for other purposes.

The bill was referred to the House Committee on Interstate and Foreign Commerce.

References in Law Cases

On June 8th, the Senate passed S. 2447, providing "That the parties to any law case in any court of the United States may waive a jury trial and may consent to a reference of all or any issues of law or fact to a referee or auditor, and the report of such referee or auditor shall be treated as presumptively correct, but shall be subject to review by the court, and the court may adopt the same or may modify or reject the same in whole or in part when the court in the exercise of its judgment is fully satisfied that error has been committed: Provided, That when the intention is plainly expressed in the consent order or otherwise that the submission is to the referee or auditor as an arbitrator, the court may review the same only in accordance with the principles governing an award and decision by an arbitrator."

The bill was referred to the House Committee on the Judiciary on June 10th.

Filing and Final Fees on Patents—Fees of Jurors and Witnesses

The Act making appropriations for the Legislative Branch of the Government, approved June 30, 1932, provides:

"Sec. 308. After the expiration of thirty days after the enactment of this Act (but in no event prior to July 1, 1932), the base fee of $25 provided by section 4934 of the Revised Statutes, as amended (U. S. C., Sup. V, title 35, sec. 78), to be paid upon the filing of each original application and upon each renewal application for patent, except in design cases, and on issuing each original patent, except in design cases, is hereby increased to $30.

"Sec. 309. Section 4934 of the Revised Statutes, as amended (U. S. C., Sup. V, title 35, sec. 78), is amended by adding at the end thereof the following: 'On filing each petition for the revival of an abandoned application for a patent, $10.'"

The same act provides:

"Sec. 323. During the fiscal year 1933—

"(a) the per diem fee authorized to be paid to jurors under section 2 of the Act of April 26, 1926 (44 Stat. 323), shall be $3 instead of $4;

"(b) the per diem fee authorized to be paid to witnesses under section 3 of the Act of April 26, 1926 (44 Stat. 323), shall be $1.50 instead of $2, and the proviso of said section 3, relative to per diem for expenses of subsistence, shall be suspended."

TRUSTEED CAPITAL VS. TRADE AND INDUSTRY

Should the Control of Property by the Owner After Death Be Denied as to Legally Competent Persons, to Limit the Accumulation of Trusteed Property—Teaching Borrowers and Depositors to Distrust the Ability of Their Families—Probable Effect on Trade and Industry—The "Spendthrift Trust" and Decline of the Boston Trade, etc.*

By Robert M. Ochiltree
Member of the Cincinnati Bar

THE first suggestion at common law, that a limit be placed on the control of property by the owner after death, was made at an English trial in 1616. The foundation of the present Ohio common law rule, which limits such control to one or more lives in being and twenty-one years thereafter, is the Duke of Norfolk's case, decided in England in 1685. The rule was later developed by judicial decisions and declared or changed by statute. It is set out in section 10512-8 of the Ohio General Code as follows:

"No interest in real or personal property shall be good unless it must vest, if at all, not later than twenty-one years after a life or lives in being at the creation of the interest. All estates given in tail, by deed or will, in lands or tenements lying within this state, shall be and remain an absolute estate in fee simple to the issue of the first donee in tail. It is the intention by the adoption of this section to make effective in Ohio what is generally known as the common law rule against perpetuities."

The historian Gibbon, in discussing succession and testaments, says the owner's control of his property after death was unknown to the civil law. He writes:

"But the power of the testator expired with the acceptance of the testament; each Roman of mature age and discretion acquired the absolute dominion of his inheritance, and the simplicity of the civil law was never clouded by the long and intricate entails which confine the happiness and freedom of unborn generations." Vol. III, Ch. XLIV, p. 702.

These historical references are made to emphasize that the common law rule, expressed in the Ohio statute, which indirectly gives to the owners dominion over their property after death, and thus enables them to tie hundreds of millions of dollars of property up in the hands of trustees, to maintain legally competent grantees and legatees without effort or care on their part, and prevent their using the principal for any purpose, is over two hundred years old at common law, and was unknown to the civil law. The rule is also one of the few ancient English common law property rules which has not been modified or abrogated in Ohio to meet modern social and economic conditions.

Therefore, in discussing the subject, whether the owner's control of his property after death should be denied as to legally competent persons, to limit the accumulation of trusteed property in Ohio, I shall refer briefly to property conditions in Ohio when the English common-law rule (or more liberal rule) was adopted; the limited practice in creating trusts for private persons prior to 1919; and then discuss the activities of corporate institutions in that field since that date; the possible effect of the vast accumulations of trusteed property on trade and industry; and suggest what would seem to be sufficient amendment of the statute to limit the persons for whom property may be trusteed.

Under the early practice in Ohio, some but not many owners of property, acting on their own free will without any solicitation, tied their property up in trusts, as permitted by statute. There were few industries, the estates were not large and often consisted of tracts of unimproved land, of which there was an abundance on the market to meet the requirements of the population.

Population and industries increased rapidly, bringing large individual fortunes with more diversified property holdings; but prior to the new era hereinafter referred to, the amount of property tied up in private trusts could not be said to be such as to injure or threaten the public welfare; and I should refer here to the statutes, which authorize the distribution of estates to the beneficiaries after six months administration, if there is no trust provided for in the will. The purpose of this legislation is to expedite the administration and distribution of estates.

In 1919 the Ohio legislature enacted sections 710—159-160, which give to trust companies the power to act as trustee under any will or deed or other instrument creating a trust for the care and management of property; also to act as executor, administrator, assignee, guardian, or receiver. With this legislation, began a new era in creating trusts by wills and by deeds. Being subject to none of the restrictions which prohibit lawyers from advertising or soliciting business, trust companies have skillfully directed and carried on through the daily press and by direct correspondence and by personal interview, a most vigorous and persistent propaganda to convince business men and all property owners that unless they call and consult the officers of the trust company and make the trust company trustee of their property, their families or individual trustees will waste or lose their estates. The business proved so profitable to state trust companies that national banks obtained permits from the federal reserve board to engage in the business; and they have joined the crusade to influence business men and other property owners to distrust the ability of their families and to trustee their prop-

*The writer does not undertake to discuss the practice in states other than Ohio; but lawyers in the several states can determine whether the discussion applies to the practice in their states.

erty; with the result that in a little more than a decade banks and trust companies in Ohio have accumulated trust property holdings, which when taken out of "freely managed business" represented approximately three billion dollars, of which at least one billion is held in trust for legally competent persons. The receipts (new trusts) exceed the distributions, and the amount of trusteed property is being rapidly increased. The business has become highly competitive. The more trust estates procured, the larger the profits for the trustees. Typewritten forms of trust deeds and wills are carried in stock by the trust officers; and among the forms of trust recommended, legally competent children of the testator or grantor will receive only the income from the property during their lives, and the grandchildren may die old men and women without receiving the principal. Thus the property is held in trust by the bank or trust company and two generations live on the income of the trusteed estate for lack of capital, or the incentive to engage in any business. More recently it is also recommended by banks and trust companies that the living trust be made irrevocable from the date of its execution, to safeguard the property ad interim; which also prevents the owner taking back his property after he returns from the vacation recommended in the booklet on trusts.

As stated in the beginning of this paper, the first suggestion that a limitation be placed on the owner's control of his property after death was made by English lawyers in 1616. Europe was beginning to emerge from the feudal system of tied up baronial estates; and Britain, among the smallest of the nations, was embarking on a crusade of risk and venture that gained world supremacy in trade and commerce, about one-fourth of the inhabitable land of the globe, and more than one-fourth of the inhabitants. There was no crusade to trustee capital, but for trade and commerce and to invest surplus capital in every country.

But the property which Ohio banks and trust companies seek to have the owners tie up in long time trusts, and thus prevent their children using it in any business, far exceeds in value the ancient English estates. It comprises the bulk of all the property. The century's accumulations from the free market sources of the state and nation. Estates of moderate size as well as large estates are solicited. The National Trust Division's Committee on Co-operation with the Bar, has declared that *"the right of trust companies and banks to advertise for and solicit fiduciary business cannot be questioned and must be maintained at all hazards."* April, 1932, Am. Bar Assn. Journal, p. 237. Italics are mine. Already a sum approaching one-half billion dollars of fiduciary property is being held and administered by single trust companies in Ohio, which means one thousand or more separate trust estates of many different kinds of property, almost innumerable complications left by the grantors and devisors, and new complications constantly arising. Each creator of a trust feels that his trust estate will be efficiently administered; but will a trust company be able to administer hundreds of millions of property in so many trusts, involving so many kinds of property and complications? However, I need not discuss that point, nor whether fear and distrust now used to procure these trust deeds and wills may react, when so many beneficiaries realize that all they have is tied up in long time trusts with so many other trusts; nor the point, that all the people's money and such vast amounts of their other property will be controlled by a few corporations. I need only refer to the observation of all lawyers, that family property arrangements and settlements by will, or by deed, are so related to the happiness and welfare of those concerned that outside officious intermeddling can do infinite harm.

But lawyers are the legal advisers of the owners of property and of the banks and trust companies, both in the execution and in the performance of these trusts, and are so advertised to the public. Therefore, they should study the question, whether a rule of law applicable to conditions one hundred years ago, is being over-commercialized by corporate institutions, to induce property owners to distrust the ability of their families, and to transfer their property to banks and trust companies in amounts never before even approached; and the effect of such accumulations of trusteed property on trade and industry, in which the public is interested.

The President of the American Bar Association, in an address before the Cincinnati Bar Association in February, 1931, said: "Under rapid fire salesmanship, trust companies are corralling a vast fund of credit, taking it out of freely managed business and placing it under legal restrictions, so as to build a very rigid structure"; "So large has this body of wealth in trust become, the public has a special interest in it." He suggested that trust companies accept only trusts for widows, orphans, and persons of unsound mind. It is probable that many banks and trust companies would be willing to adopt that course; but they would feel that so long as the owners can trustee their property under the statute, the business would be continued by other banks and trust companies and by individuals acting as trustees. I wish to refer also to the further discussion of the question by the President of the American Bar Association in his Annual Address, printed in Vol. 56 (1931), p. 176, at p. 208 of the Reports of the Association.

In his latest book, entitled "My United States", published in 1931, Frederic Jesup Stimson (the well known Boston and New York corporation lawyer, writer, traveler and diplomat; also former lecturer on Constitutional Law at Harvard) discusses the spendthrift trust as one of the "most notable causes" of Boston's commercial decline from the second to the seventeenth port, and from the second to the eighth city of the United States in population. Mr. Stimson writes: "The Boston of 1878, the Massachusetts of 1888, has as completely vanished as its seaports, whose shipping for a century covered all the world." . . . "Immense wealth had been accumulated in Boston in the first sixty years of the republic"; but Boston distrusted her sons, and tied their inheritance up by spendthrift trusts, either by deed or by will. "Instead of trusting their sons and sending them out at their own risks with all their argosies upon life's seas (as they themselves had done), they distrusted their ability (and this distrust by Boston of the ability of her sons ran through all the post-Civil War times, and in many other ways, as we shall see)

and had them all trusteed. No new enterprise could be undertaken by them, for under that court decision they had no *capital* to risk. Perforce they became coupon-cutters—parasites, not promoters of industry—with the natural results to their own characters. Hence the John M. Forbes type of Bostonian came largely to an end." "It was (he adds) as if the argosies of Venice had been realized and the proceeds placed with Shylock at four per cent. Shylock took no risks, and the Boston Bassanio, bored, spent his four per cent in elegant living." The italics are mine.

Now Ohio private trusts tie the principal or capital up in the hands of the trustee, so that it cannot be used by the beneficiaries for any purpose during the continuance of the trust; and as such tied up principal or capital is the point discussed in this paper, and the Ohio courts seem to follow the Massachusetts courts, I need not discuss how the interest given to the beneficiary is made inalienable in both states.

That the propaganda of banks and trust companies is such as to influence business men to "distrust the ability of their sons," and to make the bank or trust company trustee of their property, is clearly evidenced by the advertisements and booklets published; and I need only refer to a recent three-quarter page trust company advertisement in the daily newspapers. The advertisement recommends a form of trust, which the trust company represents had been used by a business man to protect his property after death, also to protect his son called "Harold Parton." It not only tied the principal up, but it contained a spendthrift clause that "under no circumstances shall my son be permitted to pledge or assign any part of his trust income for any purpose." The advertisement is illustrated. The scene is laid in the library or parlor of the old homestead. The picture of Harold's deceased father is hanging on the wall, looking down at Harold, and Harold is looking up at the picture. Harold has wasted $50,000 of his inheritance, so the advertisement tells us, and two business acquaintances have asked him to join them in a business enterprise and to assign his trust income for one year as evidence of good faith, also to give the name of "Parton" to the business; but Harold had consulted the trust officer who disapproved of the business, and had shown Harold that what he proposed to do was "even unlawful"—a little legal advice, not legally given, but assuring to business men. In conclusion the advertisement reads:

"Many business men believe it is not enough merely to safeguard the inheritance. They believe also in safeguarding the *inheritor.* That was the reason the 'no assignment' clause was included in Mr. Parton's trust agreement, when he had time to think clearly and bequeath carefully. It not only saved Harold's income. It saved Harold!"

"It saved Harold" from work. The clear innuendo of the advertisement is that sons of business men are like "Harold Parton" ("Partoff"), and not to be trusted with an inheritance. As proof that they are not to be trusted, with even a part of the principal, the advertisement begins with the statement that Harold had "thoroughly enjoyed spending the $50,000 left him in his father's will."

The vice of such propaganda is that it commercializes an exceptional case (a half truth, or less) to influence business men to distrust the ability of their sons, and to tie their property up with the trust company so that the sons cannot use the principal. On the same theory, if some men sell their votes, all men should be disfranchised, or allowed to vote for minor officials only. The fact that business men who accumulate fortunes often lose them also, and that the percentage of loss and failure among them is perhaps as large, or larger than among those who inherit, is not referred to.

As said before, the forms of trust deeds and wills are carried in stock by banks and trust companies; and after the "rapid fire salesman" has made the sale, the property owner calls on his attorney for advice as to the legality of the plan, or document. If it's legal, his mind is made up. Of course it's legal (it's the stock form); but its intricate provisions, conditions and entails are as unsuited to the average business man and his family and property as a field marshal's uniform would be to a civilian. Their limited use for very large estates, as in former days might go unnoticed; but to solicit and influence their general use by business men and property owners, to tie up land and buildings to deteriorate and hinder progress in the locality, for bond and stock investments which often depreciate in value (with no guaranty against loss), while the beneficiaries are kept from using the property in legitimate business enterprises profitable to the community as well, surely does not appeal to the judgment of business men, or bankers or lawyers. In farming communities, the deterioration of land and buildings tied up in trusts is visible to all; also of buildings in cities; and depreciation and loss in investments in securities are more likely to occur wherever the interest of the true owner is lacking.

I should omit reference to the services of experts, except that their services are offered by banks and trust companies as one of the inducements for the execution of long time trusts by property owners, instead of short form wills or deeds disposing of property absolutely to the devisees or grantees, (the guardian statutes to govern investments for the legally incompetent). Obviously, if property owners are not induced to create long time trusts by deed or by will, there will be little or no need for the services of the experts in making investments and in the care and management of the property. The longer the period of time the trust is to continue, the longer the estate will require the services of the experts; and the provision of the Ohio Code, limiting the contest of a will to six months in order that property may be released after administration covering that period, is rendered ineffective.

The argument that the family must be irrevocably tied to a bank or trust company (often for life) in order to receive the services of experts, is not convincing. Their happiness and freedom are confined; and it is clear they will have little incentive to thrift or enterprise. The spiritual and moral adviser has no legal control, neither has the medical adviser. The legal control of the trust is the sole remaining reminder of involuntary subjection of mature men and women to the will of another.

Formerly the business of banks and trust companies was confined principally to receiving deposits from firms and individuals engaged in trade,

manufacture and building, either as employers or as employees. The deposits were loaned to the depositors to enable them to carry on and to further develop present industries and to promote new industries. The success of the banks and trust companies depended upon the number of such depositors, the amount of the deposits, and the volume of the loans and discounts at commercial interest-bearing rates. The amounts of the deposits and loans were dependent upon the activities and success of the borrowing depositors in trade and industry; and the employment of all depended upon trade and industry.

Now the number of depositors and borrowers with capital to carry on and further develop present industries and to promote new industries is not unlimited. Will banks and trust companies become investment brokers for "coupon-cutters" (instead of bankers for business men) to the extent business men's estates and families are trusteed? Heretofore they encouraged depositors and borrowers to engage in business and risk their capital. If depositors and borrowers are induced to distrust the ability of their families and to trustee their capital, will not the type of men who made Ohio so noted for her commercial enterprises and for the prosperity of her people (the type who accumulated the wealth now being trusteed) come "largely to an end"? If banks and trust companies induce business men to trustee their capital to avoid risks, will Ohio trade and industry continue to grow, or will they decline?

It is clear that trusteed capital is not free capital, so necessary to develop trade and commerce; and Mr. Stimson's statement that the spendthrift trust was one of the "most notable causes" for the decline of Boston trade, suggests that the future historian may record that one of the "most notable causes" for the failure of the cities of the Middle-West to gain in commerce with the Republics to the South by the short direct routes afforded by the Ohio and Mississippi rivers, and by rail to the Gulf and the Panama Canal, was that banks and trust companies induced business men of these cities to trustee their capital to avoid risks. Although inland, these cities are first in quantity production of many manufactured articles in world use and require world markets.

For the public good, property rights of the individual have been limited and modified in many respects during the one hundred years referred to; and banks and trust companies are chartered by the Federal and state governments to promote trade and commerce, upon which the public depends.

Therefore, if the owner's posthumous control of property under this ancient law and modern propaganda of banks and trust companies (not contemplated by the legislator) tend to such accumulations of property as to threaten the welfare of the public, such control can and may be modified or denied altogether by the same public right that imposed partial limitation in former days and under former conditions; and it would seem that to amend section 10512-8 by omitting the words which postpone the vesting of the interests or estates would abrogate the owner's posthumous control. A clause to permit such control over the property granted or devised for the widow, and incompetents (during disability), could be added, the widow having the right of election.

However, the purpose of this paper is to discuss whether the owner's control over property granted or devised for the benefit of legally competent persons should be denied, to limit the amount of trusteed property in Ohio, and not to discuss the amending statute; nor need I discuss the point which may occur to the reader, that the denial of such control would put an end to trusts for private persons, except to add that formerly business men and other property owners favored a short will disposing of property according to the wishes of the testator, with no private trusts, naming an executor and testamentary guardian, and leaving the rest to the beneficiaries, the statutes and the Probate Court, in order that the family would receive the greatest benefit.

If a few turn out to be as represented by the trust companies, they do not justify or warrant wholesale commercialized trusteeing of families and estates. The attempt to prejudge them is unwarranted by either history or experience. On "Appeal to Caesar" as representing the thousands who succeeded in a financial way (incidentally, while succeeding in still greater things, although careless in money matters in early life), all legally competent persons are entitled to the absolute dominion of their inheritance. Of the first Caesar it is recorded that as a young man he lacked $500,000 of being worth nothing; yet he worked on and did very well and was so busy at fifty-six years of age that he did not know his friends and supporters were conspiring against him. He left a large estate under the civil law to his nephew, a boy of eighteen, who survived the triumvirates and for more than forty years ruled the Roman empire, nearly, if not quite as large as the United States in territory, with a hundred million population; and it was during his reign, that (in a distant province of the empire) "all went to be taxed, every one into his own city"; and a Teacher was born, Who gave to all time the famous story of the father who gave to his *prodigal* son his "portion of goods" so that in keeping it or losing it, "he would come to himself."

Department of Current Legislation

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method of valuation to the fixed term bond holdings of the life insurance companies achieves a result which is safe, scientifically sound, and in practice far more equitable from the standpoint of protecting the interests of policyholders than could be obtained by any market value basis of valuation.[34] In conclusion it should be stated that it is doubtful whether in the case of life insurance companies it would be possible to depart from the amortization method of fixed term bond valuation without removing from the statute book other laws which were enacted upon recommendation of the Armstrong Committee with a view to eliminating certain abuses detrimentally affecting the interests of bondholders.[35]

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34. See op. cit. footnote 1; Joseph B. McLean "Life Insurance" (2nd ed., 1929), pp. 257-266; M. Albert Linton, "Bond Amortization," XX Proceedings of the Actuarial Society of America, 441.

35. For other amortisation legislation see Iowa Code, Section 8746; Maine Rev. Stats. C. 160, Section 135; Mass. Gen. Laws C. 175, Section 11; Wis. Stats. 1931, Section 206. 35.

THE CHILD OFFENDER IN THE FEDERAL SYSTEM

By Anita J. Faatz
Superintendent Social Welfare, Board of State Aid and Charities, Baltimore

"THE Child Offender in the Federal System"[1] is the first of two reports to be issued by the National Commission on Law Observance and Enforcement on the subject of juvenile offenders. The second will deal with the problems presented by child offenders to the States.

The report adheres closely to the objective set down at the outset, namely, "to furnish description of the structure and function of existing legal agencies to the end that definitions may be worked out in the future." It approaches the problem as the "naturalist seeking to describe by means of field observations the habits of a living organism." No attempt is made, as explained in the introduction, to study causation or evaluate treatment. This will seem a wise limitation of the subject to many who agree with Miss Van Waters that scientific inquiry into the causes of delinquency must wait upon similar study of behavior of the so-called average, normal population groups.

The problems presented by this study may be stated briefly as follows: the Federal system of justice has developed no separate machinery for handling juveniles. As a matter of fact, scrutiny of court records frequently fails to yield information as to the age of the offender. The accepted concept of the juvenile court, that the child offender be handled with consideration for his welfare and the welfare of the community, would necessarily be hampered in the Federal system because often the case is heard, and the child committed to an institution, far removed from the community in which he belongs. He is thus isolated from the constructive forces of home, school, church and recreational groups which play so large a part in the treatment of juvenile delinquency. Moreover, the offense which he commits is often the same offense for which, had he not crossed a State boundary, he would have been dealt with in a juvenile court. The theft of an automobile within State confines is a State offense; carried across the border, it becomes a Federal offense.

Material presented in the report was secured from (1) daily reports as to arrests followed by jail detention made by the United States Marshals of ninety Federal judicial districts to the Bureau of Prisons (six months period); (2) reports from thirteen judicial districts for a three year period, a part of a more extended study of the Federal Courts conducted by the National Commission on Law Observance and Enforcement; (3) observation of the legal process in twelve judicial districts; and (4) study of eleven institutions, Federal and State receiving Federal offenders under contract.

The report does not present, because this information is not available, the total number of child offenders passing through the machinery of the Federal courts. Its nearest approximation to such a figure is the total of 2,243 boys and girls eighteen years of age or under *detained in jail* for Federal offense over a six months period. How materially this figure would be increased if offenders of the same age group, who passed through the courts but were not detained in jail, could be counted, is undetermined. One cannot help but be struck by the handicap presented to students of the subject because of the lack of current, continuing statistical data on the business of our judicial machinery. The author points out the tentative nature of some of the figures presented due to the fact that their meaning cannot be further analyzed. The probation figure, for example, is "rather meaningless, the terms not being designated; one boy was 'released on probation to serve a State sentence.'" Despite this handicap, the many tables on detention, age groups, offense, disposition and the like, are illuminating and a definite contribution to our understanding of the problems involved.

The report rejects the proposal that the Federal government set up a system of juvenile courts. It recommends instead legislation which will permit the States to assume responsibility in local juvenile courts. The reasons for this recommendation are set forth clearly and convincingly. Pending such legislation, certain administrative measures which are possible under existing statutes are recommended. These will be welcomed by all interested in matters of child welfare, particularly as regards wider use of resources other than the jail for detention, more exhaustive and careful study and investigation, and removal of young children from institutions not designed to meet their special needs. "The recommendation that States care for their own children is an opportunity of challenge to American citizenship."

It is a delight to meet again in this technical report the same clear, fluid style which characterized Miss Van Waters' earlier books, *Youth in Conflict* and *Parents on Probation*.

1. National Commission on Law Observance and Enforcement; *Report on the Child Offender in the Federal System of Justice*. United States Printing Office, Washington, 1931.

What Aid Can the Bar Render in the Selection of Judges?

(*Continued from page* 509)

the direction of ultimately securing a wiser method of selecting judges.[1]

Last, and by no means least, it will be an inestimable boon to litigants and lawyers alike, for when you raise the standard and quality of the judiciary, you facilitate the administration of justice, you increase the respect for law, you help vastly to restore confidence in our institutions and contentment among our people.

1. For suggestions as to the possibility of a return to the appointive system, see "Recall of Judges," VI St. Louis Law Rev. 139.
The Bar Association of Nassau County, N. Y., at its meeting Nov. 17, 1931, after approving the report of its committee to consider changes in the present system of selecting candidates for judicial offices, adopted a vigorous resolution in favor of a constitutional amendment permitting the appointment of judges by the Governor.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

SELECTED Readings on the Law of Contracts from American and English Periodicals, Edited by a Committee of the Association of American Law Schools. 1931. New York: The Macmillan Co. Pp. xcvi, 1320.—The Association of American Law Schools has for a number of years performed the very necessary and useful work of collecting and publishing in accessible form the best in Anglo-American legal literature. From 1907-1909 appeared "The Select Essays in Anglo-American Legal History"; 1912-1917, the "Continental Legal History Series"; 1911-1923, the "Modern Legal Philosophy Series." To these three great contributions must be added "Selected Readings on the Law of Contracts from American and English Periodicals." The Editorial Committee of the Association compiling and editing this volume included George J. Thompson, Cornell University Law School, Chairman; George K. Gardner, Harvard University Law School; George W. Goble, University of Illinois College of Law; and James M. Landis, Harvard University Law School.

The volume contains a selection of over one hundred articles, notes and book reviews collected from some twenty-seven different American and English legal periodicals. The titles to the articles with their authors are grouped under headings orthodox in the classification of contract law. Chapter I of the text includes articles on the history of contract law, among which are Dean Ames' classic works on the History of Assumpsit and the Modern History of the Doctrine of Consideration. The following ten chapters are: Mutual Assent, Offer and Acceptance, Consideration, Formal Contracts, Third Party Beneficiaries, Assignment, Conditions, Impossibility, Anticipatory Repudiation, Discharge, and Miscellaneous, which last chapter includes reviews by Corbin, Cook, Oliphant, and Terry of Williston's four volumes on Contract.

A table of over six thousand cases has been alphabetically arranged, under a "ready-made system of cross reference to the discussion of varying phases of the case in the same volume and other legal works." The table is complete in that it lists all cases cited in the volume, including cases from the Year Books down to those most recently adjudicated.

A selective bibliography of 611 articles appropriately arranged, in addition to the 100 articles printed in the volume, adds much to the worth of the book. This item alone makes the volume a necessity to teachers of contract law, and affords a wealth of source material for judges and practitioners. The one hundred articles of the text material include the work of fifty different authors—recognized authorities in this field of the law. It would be difficult to find fault with the choice of the committee, yet an inclusion of more controversial material concerning the proper approach to the Restatement of the Law of Contracts would have been appropriate. As stated by the Committee: "An effort has been made to present in chronological order articles and notes which develop the history of some fundamental concept, or which constitute a debate or discussion in an important province of contract law" (Preface, p. v).

"The law review essay has felt beyond the common lot the repressive cruelty of prejudice. There has been prejudice against it on two grounds—prejudice because it was not bound, and prejudice because its authors, for the most part, were not practitioners, but teachers" (Cardozo, Introduction, p. vii). It is admitted that law review materials are sources of the best legal learning. "Unfortunately, a large part of this legal scholarship has been lost to the profession by the fact that it is scattered through some sixty periodicals comprising over six hundred volumes" (p. v). This bound selection of articles in one volume overthrows Justice Cardozo's first ground of prejudice. As to the second ground—college professors and teachers are mere theorists and not practical—we find Judge Learned Hand quoted as follows: Law teachers " . . . will be recognized in another generation, anyway, as the only body that can be relied upon to state a doctrine, with a complete knowledge of its origin, its authority, and its meaning." "Authoritative" material has been limited to judicial decisions, but "a change is in progress." Law review material is, to a slightly increasing extent, being used by judges as "authoritative." Douglass B. Maggs, *Concerning the Extent to Which the Law Review Contributes to the Development of the Law,* (1930) 3 So. Cal. Law Rev. 181. Likewise, Justice Cardozo writing in the introduction states: "Certain, in any event, it is that the old prejudice is vanishing. Within the last ten or fifteen years the conspiracy of silence has been dissolving, with defections every year more notable. . . . Judges and advocates may not relish the admission, but the sobering truth is that the leadership in the march of legal thought has been passing in our day from the benches of the courts to the chairs of the university."

We are well into a period of readjustment and a restatement of the law. The teaching profession, through the legal periodicals, has made excursions into the unknown and has marked a way for the advocate and the judge. Lawyers and judges are ever increasingly citing law review material. It is hoped that this volume will be the incentive for more of its kind in the fields of trusts, business associations, torts, and other fields. To libraries and teachers this book is a

necessity, to judges and practitioners it will serve a most useful purpose.

CHARLES G. HOWARD.
University of Oregon School of Law,
Eugene, Oregon.

Cases on Insurance. By George W. Goble. 1931. Indianapolis: The Bobbs-Merrill Company.—A case-book may be of value to a practitioner either as a means of bringing to his notice a case in point from which to start his search, or if his library facilities are limited, it may serve to supplement his reports. By either test Professor Goble's *Cases on Insurance* has an unusual practical value.

The cases, most of them of recent date, are extremely well chosen and arranged, and cover a wide variety of situations which are constantly recurring in insurance litigation. A generous supply of footnotes adds much in suggesting possible variations in the application of the rules announced in the reported cases, and references to relevant annotations in collections of selected cases give many valuable leads. The feature which makes the book stand apart is the use of many extracts from articles and notes which have appeared in law reviews, the value of which practitioners are coming more and more to appreciate.

There is a table of cases, an excellent list of law review articles and notes, an appendix of policy forms, and an index. The paper and printing are good, and the binding durable and attractive.

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Accidental Means. By Martin P. Cornelius. 1932. Indianapolis: R. M. Chandor.—As the title indicates only those cases which consider the meaning of the words *accidental means* as used in the insuring clause of personal accident policies are included in this volume. The method of presentation is a little unusual; it consists of the statement of twenty-five propositions of law which are followed by the citations of all of the reported cases supporting each proposition. The citations are followed by a discussion of the leading supporting cases, and a critical examination of the cases holding to the contrary.

As a collection of cases in point the volume is particularly useful, and it is recommended to those whose professional duties require a consideration of the problems presented by litigation on policies in this form.

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Max Steuer. Richard O. Boyer. 1932. New York: Greenberg.—This is one of those rare biographies that has nothing to commend it, and one can easily understand why Mr. Steuer has disapproved of it. And that is about all that need, or could, be said.

JOSEPH HOWLAND COLLINS
New York City

Symposium on German and American Law.—The Juristische Wochenschrift, the official publication of the German Bar Association, the foremost German legal periodical, has published as its Washington's birthday number (vol. 61, No. 8) a special issue dealing, from various viewpoints, with cultural relations between Germany and the United States in the realm of law. Dr. W. Kiesselbach, president of the Appellate Court in Hamburg and former member of the German-American mixed claims commission, who as such has acquired first-hand knowledge of conditions in this country, comments upon those features of the American judicial system which are not found in Germany, especially the election of judges, trial by jury, and the separation of law and equity. The judicial process in German law is dissussed by Professor Karl N. Llewellyn of Columbia University, who is spending a sabbatical year as visiting professor at the University of Leipsic. He concludes that the differences between German and American methods of deciding cases are not as great as appears on the surface. He prefers the American practice of publishing diverse opinions ascribed to named judges, to the German scheme of uttering a single anonymous opinion of the court, without dissents. A vivid picture of Mr. Justice Oliver Wendell Holmes and of his rich contributions to American law both on and off the bench is presented in a second article by Professor Llewellyn. Legal problems of great timely importance are dealt with by Dr. Karl vom Lewinsky, former German consul general in New York City, and now a prominent attorney of Berlin, who discusses the acceptance credit agreements between Germany and her creditors, especially the United States, and by Dr. Robert Marx who discusses American arbitration law and its bearing upon international arbitration. The method of teaching comparative law at Columbia Law School is outlined. A number of American law books are reviewed, and German court decisions growing out of German-American commercial intercourse are annotated.

This symposium gives an impressive picture of German-American cultural and legal relations, and typifies the keen interest of the German mind in things American.

JOHN WOLFF
Columbia Law School

The Evolution of International Public Law in Europe Since Grotius, by Walter Simons. 1931. New Haven: Yale University Press. Pp. 146.—The author, a "hundred per cent. German," delivered these six Lectures at the Institute of Politics at Williamstown; though not a Barrister, he was legal adviser to Prince Max of Baden, the last Imperial Chancellor; he was later Commissioner-General under Von Brockdorff-Rantzau at Versailles, German Minister of Foreign Affairs, Director of the Chancellery of President Ebert, Acting-President of Germany, and finally Chief Justice of the Supreme Federal Court.

The subject of the lectures is accurately expressed in the title; and while all will not agree with all the conclusions, all must recognize the ability, candor and accuracy of the lecturer. The work is in every way a creditable production.

In the wealth of material so admirably presented, it is impossible to do more than give a general statement of the contents.

The first lecture, "The State and State Sovereignty," traces the evolution and growing individualism of the conceptions of international and national public law from pre-Grotian times before "the idea of state . . . or of State sovereignty was clearly and definitely conceived." In his view that Grotius, the Dutch statesman, is the father of the Law of Nations, most will agree; I, for one, am unable to accept the view of my fellow-Canadian, Dr. James Brown Scott, that the Dominican Professor at Salamanca, Francisco de Vitoria, has a better claim to title.

The Treaty of Westphalia, 1648, realized many of the ideas of Grotius, expressed in his famous *De Iure Belli ac Pacis,* twenty-three years before, and made

state sovereignty secure. Followed the downfall of the Feudal System—Wallenstein's effort, gallant as it was, was futile and fatal—and the steady rise of the modern conception of the State as "an organization of a certain people . . . in a limited territory and ruled by a fixed constitution," with a paramount power within it to which every other must bow, and taking commands from no extraterritorial power, Emperor or Pope. This paramount power, moreover, is now based upon justice; and we do not witness such a spectacle as a King who is in the wrong punishing Judges who are in the right and by his arbitrary act gaining a mighty credit in the hearts of his people as did Frederick the Great—nor can a Ruler, now, be he King, President or Prime Minister, say as did Louis XVI, "L'état, c'est moi." Hobbes' Leviathan is as dead as the Dodo; the State and the Law are not necessarily identical.

In the second lecture, "Rights of War," we are told that some sort of the ancient private war subsisted till the time of Napoleon, though in the main abolished by the epochal Treaty of Westphalia; the romantic expedition of D'Annunzio with his *Arditi* into Fiume and that of Zeligowski with his Poles into Wilna seem a reminiscence of the practice. Such private wars, however, are out of date and no more to be imitated than the seizure of Saguntum by Hannibal or the piracies of Raleigh and Blake.

Whether the Pact of Paris of 1928 will be as successful in outlawing war as the Pact of Paris of 1856 was in outlawing privateering (though, as in the case of the League of Nations, the United States declined to join in the latter) remains to be seen. Of the League of Nations following the Great War which to all except the United States was a matter of life and death, the value in spite of its lack of universality the lecturer thinks cannot be overestimated; and it is to be hoped, if not confidently expected, that as it has worked remarkably well in its varied administrative tasks it may succeed in having all nations permanently disavow war as a means of settling international disputes.

The third lecture, "Rights of Neutrality," shows that neutrality was not quite unknown to the ancient world, but the word itself was first used in this sense in a political document in 1638 in the famous Declaration of Neutrality sent by the Swiss to the Emperor; but even Swiss neutrality had not general acknowledgement until the Peace of Vienna in 1815. Until the end of the 18th century, indeed, some of the nations took a very liberal view of neutrality. The hope is expressed that "international lawyers in formulating rules for neutrality may be anxious to avert making excuses for war."

The fourth lecture, "State Responsibility and Intervention," contains the curious but in a non-Briton a natural error that the maxim of our Common Law, "The King can do no wrong" is the English correlative of the antique Roman, "Princeps legibus solutus." The Common Law has no such connotation and it has absolutely no tendency to make the Law of Nations a fiction. One does not wonder at a German misunderstanding our British Petition of Right. All the methods whereby the responsibility of a State may be enforced if justly asserted by another State under the Law of Nations, diplomatic negotiations, arbitration, reprisals, war, are noted, as are the means used by a neutral—good offices, mediation, intervention. The lecturer thinks intervention most dangerous to peace and contrary to basic principles of international law.

The fifth lecture, "Nationalities and Minorities," considers what "is the most widespread and most dangerous political issue of the Old Continent," due to the persistence of the Middle Ages conception of a nation more racial than political. The idea of a national State is due to the French Revolution of 1789 and the American Revolution of 1776; *pace* Bernard Shaw, Joan of Arc was not a representative of modern nationalism.

But few, if any, of the great European nations were or are perfectly united nations and there are and must continue to be difficulties in arranging the differences. Here is told the delightful illustrative story of the Russian Madame Byzenko, "a murderer but a lady . . . bitter, harsh and wilful . . . who listened with softened eyes" to Haydn and Schubert and asked for Mozart also, in whom "under the layers of political and national and social hatred . . . there was buried . . . not dried up the fountain of a very sensitive soul, capable of loving all that is good and true and beautiful."

The last, the sixth lecture, "International Cooperation and International Jurisdiction," is in many respects the most interesting. Before Grotius, apart from the Hansa, there was no real international association of a constructive kind. Pope Urban VIII cannot be said to have scored a success in his Cologne Conference in 1636, nor England in 1638 at Brussels, nor Sweden and the Emperor in 1639-40, and the terrible Thirty Years' War went on with all its horrors until 1648.

More recently we have the Vienna Congress in 1814, the Paris Conference of 1856, that of Berlin in 1878, of the Congo in 1885, of Algeciras in 1906, of the Hague in 1899 and 1907; but these "lacked continuity, consistency, sometimes even constructiveness." Such conventions as the Postal Convention of 1874, the Telegraphic, the Trademark and Copyright, the Submarine Cable Conventions, including most of the activities of modern civilization, show what can be done.

It is to be hoped that the League of Nations will verify the high hopes of its efforts in other fields.

The book leaves nothing to be desired in paper, print, binding or proof-reading, and it is a worthy and a notable production in every way.

WILLIAM RENWICK RIDDELL.

Osgoode Hall, Toronto.

The King's Bench Masters and English Interlocutory Practice. By Edward S. Greenbaum and L. I. Reade. 1932. Baltimore: The Johns Hopkins Press. Pp. xxiv, 106.—This little book presents in a very brief way the elementary principles of auxiliary administration which underlie the normal processes of the English Supreme Court of Judicature.

Just as the practicing profession in England is divided into two classes, barristers and solicitors, in order to develop a higher degree of specialization and expertness, so the judiciary itself is divided into administrative and judicial branches, in order to deal more effectively with the two kinds of problems which are involved in litigation.

The masters deal with a great variety of procedural questions, which come before them at pre-

liminary stages and profoundly affect the scope, character, duration and expense of the case.

The ordinary masters decide what pleadings shall be filed, the extent and nature of the discovery to be allowed, the place and method of trial, and, to a very slight degree, the issues to be submitted. They administer a very effective and convenient system of payment into court, with or without a denial of liability, which results in many settlements. They dispose of four-fifths of the business brought into the high court, by rendering summary judgments, in cases which involve no controverted questions of fact, thereby enabling the judges to give adequate attention to the really contentious business of the court.

Practice masters sit to pass on points of practice which trouble counsel. Taxing masters deal with the enormous and complicated bills of costs which are becoming a menace to the usefulness of the English courts.

All of this frees the judges from routine matters, but the system itself tends to become elaborate, perfunctory and formal, and it is undoubtedly very expensive. Whether the results justify the cost is the main question which occurs to the American observer. But the present book does not throw much light on the effectiveness of the master system as a part of the general scheme for administering justice. Indeed it adds little to what has already been said by many writers, though the material is presented in very convenient and accessible form.

EDSON R. SUNDERLAND
University of Michigan

Leading Articles in Current Law Reviews

University of Pennsylvania Law Review, May (Philadelphia, Pa.)—Liability in Conduct of Receiverships, by Joseph First; Capital Returns Accruing to a Surviving Spouse as Taxable Income, by Warwick Potter Scott; Jurisdiction over Suits Against Foreign Consuls in the United States, by R. G. Surridge.

Minnesota Law Review, May (Minneapolis, Minn.)—Meanings of Possession, by Burke Shartel; The Federal Anti-Injunction Act, by Edwin E. Witte; Special Legislation and Municipal Home Rule in Minnesota: Recent Developments; by J. Murdock Dawley.

Tennessee Law Review, April (Jackson, Tenn.)—The New Tennessee Code, by Charles C. Trabue; A History of Codification in Tennessee, by Samuel C. Williams; Proceedings Before a Justice of the Peace, by Richard N. Ivins.

Law Quarterly Review, April (The Carswell Co., Toronto, Can.)—The Origins of the Inns of Court, The Right Hon. Sir Frederick Pollock; Academic Elements in Roman Law, by Prof. H. F. Jolowicz; The Imperial Conferences, 1926-1930; The Statute of Westminster, by Prof. W. P. M. Kennedy; Culpa and Bona Fides in the Actio Ex Empto, by Prof. W. W. Buckland; The History of Judicial Precedent: IV, by T. Ellis Lewis; Assignments of Debt in England from the Twelfth to the Twentieth Century: II, by Stanley J. Bailey.

United States Law Review, May (New York City)—Panics, Prosperity and Patents, by Joseph V. Meigs; Hearsay Evidence in Europe, by Robert E. Ireton; Ethics and Contempt, by Albert G. Seidman.

Michigan Law Review, May (Ann Arbor, Mich.)—Liability Without Fault and Proximate Cause, by Fowler V. Harper; The Judicial Process of Treaty Interpretation in the United States Supreme Court, by John Selden Tennant; When is a Corporation Insolvent, by Floyd Mathew Rett.

St. Louis Law Review, April (St. Louis, Mo.)—The Federal Constitution and Contract Exemptions from Taxation, by Joseph H. Zumbalen; Recent Controversies Regarding Congressional Districts, by Isidor Loeb; Protection of the German System of Controlling Employment by Collective Agreement, by Ralph F. Fuchs; Liability for Accidents under the Missouri Workmen's Compensation Law, by Robert E. Rosenwald.

Southern California Law Review, April (Los Angeles, Cal.)—The Doctrine of Green v. General Petroleum Corporation, by Charles E. Carpenter; Dependent Relative Revocation, by Francis T. Cornish.

Georgetown Law Journal, May (Washington, D. C.)—Legal Work in the Department of State, by Green H. Hackworth; A Quarter Century of our Extraterritorial Court, by Charles S. Lobingier; Imperial Constitutions of Theodosius II and the Council of Ephesus, by Francesco Lardone; Trusts Resulting from Part Payment of the Purchase Price, by Lewis C. Cassidy.

Harvard Law Review, May (Cambridge, Mass.)—For Whom are Corporate Managers Trustees? by E. Merrick Dodd, Jr., The Legality of Price-Fixing Agreements, by Louis L. Jaffe and Mathew O. Tobriner; Contests and the Lottery Laws, by Charles Pickett.

The American Journal of Police Science, March-April (Chicago)—Plans and Sketches, by Capt. W. J. Hutchinson; Science and Advancements in the Examination of Questioned Documents, by James Clark Sellers; Determination of the Type of Pistol Employed from an Examination of Fired Bullets and Shells, Part II, by Dr. Otto Mezger, Dr. Walter Heess and Criminal Inspector Fritz Hasslacher, Stuttgart, Germany; Selected Decisions, by O. C. Knudsen, A. O. Hoffman and J. F. Waterman; Felonious Shootings—One or Two Persons Involved? by M. Kernbach; The Application of Blood Groups in Forensic Medicine, by Philip Levine; Science and the Detective, by C. Ainsworth Mitchell.

New York University Law Quarterly Review, June (New York City)—Preliminary Questions in Statutory Interpretation, by Frederick J. de Sloovère; Equitable Mortgages, by William F. Walsh; The Nationality of Married Women, by Gladys Harrison.

Virginia Law Review, May (University, Va.)—Should Negligent Misrepresentations be Treated as Negligence or Fraud, by Francis H. Bohlen; Extra-Territorial Jurisdiction in China, by A. Wood Renton; Jurisdiction over Injuries to Maritime Workers, by Warren H. Pillsbury.

Kentucky Law Journal, May (Lexington, Ky.)—The American Law Institute's Restatement of the Law of Contracts with Annotations to the Kentucky Decisions, by Frank Murray; Resulting and Constructive Trusts in Kentucky, by Alvin E. Evans; The Machine-Age Mind and Legal Developments, by Edwin F. Albertsworth; Some Problems of Coverage Under Public Works Bonds, by H. H. Grooms; Personnel Administration in Public Higher Education, by M. M. Chambers; Taxation of Oil and Gas Interests (continued), by C. G. Haglund.

Journal of Criminal Law and Criminology, May-June (Chicago)—The Judge and the Grand Jury, by Andrew A. Bruce; The French Correctional Courts, by Damon C. Woods; Reversible Error in Homicide Cases, by Newman F. Baker; Bygone Phases of Canadian Criminal Law, by William Renwick Riddell; Individualism and the Use of Predictive Devices, by Sheldon Glueck; Vignettes from the Criminal Court, I, by Charles C. Arado; The Prevention of Crime, by Herman Adler; Drug Peddling, Addiction and Criminalism, by Mary D. Bailey; A "Justified" Murder in Russia, Vladimir Haensel; What Shall we do With our Convicts? by Jerome Dowd; Report of Committee on Mercenary Crime, by Ernest MacDougall, William D. Knight, and George A. Bowman; The World's Oldest Training School for Prison Officials, by J. L. Gillin; Training the Prison Staff in Prussia, by Thorsten Sellin.

University of Cincinnati Law Review, May. (Cincinnati, Ohio)—Personal Judgment may not be Rendered in Ohio for Delinquent General Taxes and Special Assessments on Real Estate, by Ansel B. Curtiss.

Michigan State Bar Journal, May (Ann Arbor, Mich.)—The Incorporated Bar—a Body Politic, by Herbert Harley; Liability without Fault and Proximate Cause, by Fowler V. Harper; The Judicial Process of Treaty Interpretation in the United States Supreme Court, by John Selden Tennant; When is a Corporation Insolvent? by Floyd Mathew Rett.

OPINIONS OF COMMITTEE ON PROFESSIONAL ETHICS

Opinion 59

(December 14, 1931)

Advertising—The distribution of a diary or appointment book which has an attorney's card imprinted on the cover, is a form of advertising and, as such, is improper.

A bonding company which publishes a law list, issues each year a leather-bound "year book" which has a page headed for each day of the year, and which is convenient for use as a diary or appointment book. In the front and back it contains advertisements of the company and its law list. The company is now offering to sell these books to the attorneys whose names it publishes, each book to bear in gold, on the cover, some form of the attorney's imprint, such as:

Compliments of
A, B, C, and D,
Attorneys-at-Law,
Union Trust Building.

We are requested to express an opinion as to whether an attorney may properly distribute such books, as a form of Christmas greeting.

The Committee's opinion was stated by MR. CARNEY, Messrs. Howe, Hinkley, Harris Gallert and Strother concurring.

The purchase and distribution of the "year book" described in the manner set forth in this question is obviously a form of advertising. Its purpose is to remind the client at the Christmas Season of the fact that the donor is still practicing law and the clear expectation of the attorney is that, through the use of the book, the client will be so reminded day by day during the ensuing year. It is a subtle commercialization of the spirit of good will which prevails at the Holiday season and its impropriety is not lessened because it bears the guise of that spirit. The distribution of such a book being a form of advertising must be condemned as a violation of Canon 27.

Opinion 60

(December 14, 1931)

Employment—An attorney who has entered his appearance for the purchaser in an action brought by a trustee for the confirmation of a contract with the purchaser for the sale of certain property, cannot properly thereafter accept employment to act therein as attorney for the trustee also.

Conflicting Interests—An attorney who has entered his appearance for the purchaser in an action brought by a trustee for the confirmation of a contract with the purchaser for the sale of certain property, cannot properly allow himself to be substituted as attorney for the trustee and thereafter act as attorney therein for both the purchaser and the trustee, as their interests are necessarily conflicting.

Fees—It is improper for an attorney who entered his appearance for the purchaser in an action brought by a trustee for the confirmation of a contract made with the purchaser for the sale of certain property, who subsequently caused himself to be substituted as attorney for the trustee and who thereafter acted therein as attorney for both the trustee and the purchaser, to seek or receive compensation from the trustee estate for any services which he may claim to have rendered the trustee in the action.

A trust company is a trustee for a large estate which, under the will of the testator, it is to hold for the life of A, with remainder to various other persons. In the course of its administration the trustee, at the instance of the lifetenant, entered into a contract with C for the sale of certain real estate and filed a bill in equity, asking the court to pass upon and confirm the sale agreement, its trust officer acting as its attorney of record for that purpose. The remaindermen were made defendants to the bill.

An attorney, B, had long been acting as counsel for A and had, on occasion, actively opposed the interests of the other cestuis que trustent. Upon the filing of the bill, B entered his appearance for A and for C, who, along with the corporate trustee, sought to obtain confirmation of the proposed sale over the objections of the remaindermen. After the filing of the bill, the trust officer who filed it was paid his fee and withdrew from the case, and thereafter B also represented the trustee.

The litigation proved to be lengthy and complex. There was a conflict of interest between the lifetenant and the remaindermen, between the lifetenant and the trustee, between the trustee and the remaindermen and between the proposed purchaser and the remaindermen, as well as between the purchaser and the trustee. The remaindermen contended that the conditional sale of the property in question was at a price far less than its actual value. Their contention was finally sustained and the property disposed of, at a court sale, at a price nearly twice as much as the objectionable contract called for.

The question then arose as to who should pay for B's fees. He claimed a large fee, making his claim entirely against the trust estate, despite the fact that he had been representing clients who had been endeavoring to lessen its value by having part of its property sold to one of them at a price much less than the value finally determined at judicial sale. If allowed against the trust estate, B's fees will actually be borne by the remaindermen, who were compelled to employ and pay their own counsel in order to defeat the efforts made by B to secure approval of the objectionable contract.

We are asked to express an opinion as to whether it was proper for B, who was then representing A and C in the matter, to accept employment from the trustee to represent the trust estate. If this be answered in the negative, we are asked to then state whether B might thereafter properly endeavor to collect fees from the trust estate for his services in the matter, when those services were rendered in an endeavor to force the disposal of a part of the property of the trust estate to his other clients, at less than its salable value.

The Committee's opinion was stated by MR. HINKLEY, Messrs. Howe, Gallert, Strother and Carney concurring.

This question presents a clear case of an attorney representing conflicting interests in violation of Canon 6. It was the duty of the trustee and to the interest of the remaindermen to get the maximum price. It

was to the interest of the proposed purchaser to buy as cheaply as he could. The attorney for the purchaser therefore could not properly also act for the trustee.

The proceeding was instituted by the company's trust officer, who acted as its attorney up to the point where the ratification of the sale was for the court to determine. The litigation that followed was caused by the different estimates of value placed on the property by the purchasers and the beneficiaries of the trust funds. The real question then was one between the purchaser and the beneficiaries of the trust. It was the duty of the trustee, inherent in its fiduciary capacity, to protect the interest of these beneficiaries. That duty could not be performed for it by an attorney who represented an adverse interest.

In the conflict that developed over the ratification of the proposed sale, the services of the attorney were evidently rendered on behalf of the purchaser. The attorney, therefore, should look to his primary client, the purchaser, for compensation for his services. He is not entitled to compensation out of the trust fund for his partisan activities on behalf of the purchaser.

Under the circumstances stated, the attorney who represented the purchaser cannot ethically seek or receive compensation from the trust estate for any services which he may claim to have rendered the trustee in the action.

While we are not asked to express any opinion as to the conduct of the lawyer-trust officer in acting as attorney for the trustee in the filing of the bill, we must reiterate the disapproval thereof which we have heretofore expressed in Opinion 10.

Opinion 61

(March 19, 1932)

Fees—Proper for an attorney to charge reasonable fees for services in endeavoring to secure a pardon for a convict.

A member asks whether a lawyer can properly make a charge for services rendered in obtaining a pardon for a convict. It is to be assumed that the lawyer's conduct is wholly free from objectionable tactics and that his services consist of securing letters of recommendation to the pardoning executive and the presentation of the matter to the Governor or the Board of Pardons.

The committee's opinion was prepared by MR. STROTHER and in his absence was stated by the Chairman, Messrs. Howe, Hinkley, Evans, Harris, Gallert and Carney concurring.

The pardoning power is generally lodged in the executive rather than in the judicial department, yet an application for pardon and its presentation require knowledge and skill of a legal nature. The convict has the legal right vouchsafed to him to apply for the grace or right to pardon or clemency. Except where prohibited by law, it is not improper for an attorney to accept a reasonable fee from a convict in representing him in an application for pardon although the attorney's services include the securing of letters of recommendation and the presentation of them along with the application.

Opinion 62

(March 19, 1932)

Advertising—Indirect—Attorney's duty to bring about the discontinuance of indirect advertising in his behalf, even when done without his consent.

Advertising—Indirect—A newspaper's repeated publication of a laudatory announcement regarding an attorney is indirect advertising, even when not done at his request or with his consent.

John Doe, a practicing lawyer residing in a small community, moved to a city in the same state, to engage there in the practice of law. Following his arrival one of the newspapers in that city printed his picture and underneath it the following statement:

"Senator John Doe, formerly of . . . has moved to . . . and announces the opening of his law offices at 604 . . . Bank Building. He comes to . . . with the reputation of being one of the leading trial lawyers of the state."

This picture and statement were published repeatedly, day after day. We are requested by the State Board of Law Examiners of the state to express our opinion as to certain questions which have arisen in connection with their investigation of the matter.

1. Assuming that Doe did nothing to inspire or cause the printing of the picture and statement, was he under any professional duty, after having knowledge of the repeated publication of the article, to take any steps to prevent its further publication?

2. Assuming that the publication was made and continued by Doe's request but that the request was made without offering the editor or publisher any incentive for so doing, would Doe's conduct in making such a request be improper?

3. Assuming that Doe caused the publication to be made and continued by promising to give his legal advertisements to this paper or by any other incentive, would his conduct in doing so be improper?

The committee's opinion was stated by MR. HARRIS, Messrs. Howe, Hinkley, Evans, Gallert and Carney concurring.

The assumptions in question one and two stretch credulity almost to the breaking point. The facts stated in the preamble clearly disclose improper advertising of the most flagrant nature. We cannot believe that the newspaper's repeated publication of the attorney's picture and announcement could have occurred without his request or consent. But if it be true that such publication has been made as suggested in question one, nevertheless it was the duty of the lawyer, as soon as his attention was called thereto, to request and require the publisher to discontinue publication of the article. The failure so to do would permit him to be "advertised" by indirection contrary to the provisions of Canon 27. Such advertising we disapprove. Obviously the answer to questions two and three is the same, and such conduct is in each instance improper.

Opinion 63

(March 19, 1932)

Fees—An attorney is under no ethical obligation to associates for payment of their fees for services rendered his client unless he has definitely agreed to be liable therefor.

A, an attorney, wrote B & B, attorneys in another city, that he represented a woman whose mother resided in the city where B & B are located. He informed B & B that his client stated that her mother had been ill and was said to be mentally deficient and had made several unwise investments in real estate, that she had never fully paid for the real estate and that the sellers had improperly obtained quitclaim deeds to the properties on which she had paid several thousand dollars. A asked B & B to investigate the mother's condition and the facts as to her supposed dealings. He said nothing about payment of fees or expenses for the work

involved. B & B made the investigation and learned that the mother was cared for by the county and that her investments were simply those of a woman mentally deficient. B & B accompanied their report to A with a bill for services. When pressed for payment A stated that his client had not paid him. B & B informed A that they had made the investigation at his request and looked to him for payment. A refused to pay on the ground that he was not liable. B & B thereupon made complaint to the bar association where A is located and its executive committee answered the complaint as follows:

"Attorney A is a man of good standing in this community and at the Bar, and we went over this entire matter with him. We cannot agree with your conclusion that attorney A was the 'guarantor of a reasonable fee for the work performed' by you. Attorney A has never received a thing for his services in connection with this matter."

B & B ask us to express an opinion as to the extent of the obligation, if any, for fees which they claim A ethically assumed when he sent the matter to B & B for investigation. They ask the Committee to state specifically whether it is ethically proper for A to refuse to pay them for their services, irrespective of whether his client pays him or not.

The committee's opinion was stated by MR. HOWE, Messrs. Hinkley, Evans, Harris, Gallert and Carney concurring.

Any question as to the amount of an attorney's fee or method of its payment is a matter of contract, expressed or implied, to be construed as other contracts are construed. Any controversy concerning such a matter is a matter of law to be determined by the courts. Ordinarily no ethical question is involved in such a controversy.

The committee does not express opinions concerning questions of law. Nevertheless, it is not inappropriate to say that when a lawyer procures for his client the services of lawyers in other cities, he usually does so as his client's agent without assuming any greater obligation for the payment of fees for services rendered his client than would be assumed by any other agent for the indebtedness of his principal.

The conduct of a lawyer with other lawyers should be characterized by candor and fairness. *Canon 22.* Candor and fairness required that if A had any doubt as to his client's ability to pay for the services he was requesting B & B to render, he should have informed B & B of that doubt in order that they might have better determined whether they should render the service without having an adequate retainer or A's guarantee of their fees. Candor and fairness likewise required that A should have used every endeavor to induce his client to pay B &B for their services but did not require him to assume the obligation unless he had specifically agreed to do so.

Opinion 64

(March 19, 1932)

Employment—An attorney cannot properly accept employment to attack the validity of an instrument which he drew for a client.

A husband and wife executed a joint, mutual and reciprocal will which was prepared by their attorney. After the wife's death the attorney drew, for the surviving husband, a formal instrument by which the husband sought the cooperation of the church of which his wife had been a member, in erecting a building as a memorial to perpetuate her memory. The offer set forth many conditions, amongst them that the church should furnish the real estate, pay one-half the cost of the building and provide for its maintenance. The church accepted the offer. After the husband's death the devisees and legatees under the reciprocal will sued to defeat the gift on the theory that he had no legal right, under the terms of the will mentioned, to devote any part of his estate to the building of such a memorial.

A member asks whether it is proper for the attorney now to represent these devisees and legatees in their efforts to defeat the purposes and objects of the contract which he prepared while representing the husband.

The committee's opinion was stated by MR. HINKLEY, Messrs. Howe, Harris, Gallert and Carney concurring.

The attorney should not attempt to nullify his own work. He drew the instrument and cannot attack its validity after his client has died and his services are sought by new clients. The death of the former client does not release the attorney from his obligation.

The case comes fairly within Canon 6 relating to conflicting interests. That Canon contains the following language:

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

In deciding the question stated the committee expresses no opinion as to the validity of the contract with the Church.

Opinion 65

(March 19, 1932)

Encroachment—Improper for an attorney to endeavor to supplant another in a law list by means of statements containing comparisons which are to the other lawyer's disadvantage.

The Grievance Committee of a city bar association presents the following statement of facts:

A firm of attorneys, A & A, are the so-called "representatives" in that city of a law list, being the only attorneys of that city who are at present listed in that particular list. A considerable amount of what is referred to as "commercial business" (which apparently means collection matters) is supposedly sent to A & A through their "representation" in this list. B & B, another firm of attorneys in that city, desiring to have their name appear in the list, either to supersede A & A, or to be listed with them, applied for such listing to the publishers of the list. In doing so B & B made certain statements concerning A & A's equipment and arrangements for giving proper attention to commercial business which, while substantially true, were so stated and colored as to give the definite impression that A & A could not be expected to secure satisfactory results. B & B's letter urged the publishers to investigate for themselves but expressed confidence that they would find the situation as represented. When questioned by the Grievance Committee, B & B stated that it is customary for those desiring "representation" in law lists to file an application therefor, giving any information that may assist in its being considered favorably.

We are asked to express an opinion as to whether B & B's endeavor to secure "representation" in such a list is advertising or solicitation of business and, if not,

whether it was proper for B & B to accompany their application for such representation with statements as to A & A's lack of equipment or arrangements to properly handle such commercial business, irrespective of the truth of such statements.

The committee's opinion was stated by MR. HARRIS, Messrs. Howe, Hinkley, Evans, Gallert and Carney concurring.

As we understand this question attorneys A & A are and have been the sole representatives of the law list in the city mentioned. Attorneys B & B, also practicing in this city, desire to supplant A & A as such sole representatives. They thereupon file with the publisher of this law list an application to be chosen such representatives in place of A & A, and in this application criticize A & A's services and capacity to serve the clients who through the law list employ them. They also urge their own qualifications and equipment, comparing these with those of A & A to the detriment of A & A and to their own advantage.

This conduct is improper and contrary to the ethics of our profession. In view of the provisions of Canon 43 and the necessary implications thereof, we do not condemn an application by attorneys for admission to a law list when a vacancy occurs, provided they do not set forth their qualifications in an immodest or improper manner. But efforts to dislodge another law firm from a list through comparisons of that firm with the applicant firm, to the disadvantage of the encumbent firm and to the advantage of the applicant, are highly unethical. Such conduct transgresses that portion of Canon 7 which reads as follows "Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar." Obviously and for a stronger reason, if the animadversions against the brother lawyers are of a quality tending to give a wrong impression of their talents and equipment, the answer is the same.

Opinion 66

(March 19, 1932)

Witnesses—Propriety of obtaining names of witnesses by means of direct communication with adverse party.

An attorney for the defendant, in a pending action, desires to take the deposition of some officer of the plaintiff corporation. He therefore requested the attorney for the plaintiff to furnish him with the name of the officer of the plaintiff corporation most familiar with the subject to be covered by the deposition. The attorney for the plaintiff promised to comply with the request but has failed to do so.

Under such circumstances would it be proper for the attorney for the defendant to request the president of the plaintiff corporation to furnish him with the name of the officer most familiar with the subject on which testimony is desired.

The committee's opinion was stated by MR. HINKLEY, Messrs. Howe, Evans, Harris, Gallert and Carney concurring.

Canon 9 states that "a lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel." This Canon does not cover this case, because the Canon refers only to communication on the subject of the controversy and not to ascertaining the name of a witness whose testimony may be desired for the proper trial of the case.

The attorney for the defendant took the proper course when he first requested the plaintiff's attorney to furnish the name of an officer whose testimony he is entitled to have for the purpose of the deposition. If the attorney for the plaintiff, after promising to ascertain the name of the officer, fails or neglects to furnish the information, defendant's attorney is fully justified in applying directly to the president of the plaintiff corporation for the name of the required officer, so that he may call him as a witness. In writing directly to the president of the corporation, the attorney should explain why he finds it necessary to make the request directly instead of through plaintiff's attorney. A copy of the letter to the president should be sent to the plaintiff's attorney.

Where the local practice enables the attorney to ascertain by legal proceedings the name of the officer to be summoned, it would be preferable to use that method.

Opinion 67

(March 21, 1932)

Judicial Ethics—Impropriety of permitting radio broadcasts of court proceedings.

Our attention is called to the fact that direct-from-the-courtroom radio broadcasts were made of the proceedings of a recent murder trial and to a resolution of the Committee on Improper Publicity of Court Proceedings, of the Los Angeles Bar Association, condemning such broadcasting of court proceedings from courtrooms.

We are asked to express an opinion as to whether it is proper for a judge to permit his courtroom to be used for the radio broadcasting of any of the proceedings of the court over which he presides.

The committee's opinion was stated by MR. GALLERT, Messrs. Howe, Hinkley, Harris and Carney concurring.

Judicial proceedings should be conducted in a dignified manner. Radio broadcasting of a trial tends to detract from that dignity and to change what should be the most serious of human institutions either into an enterprise for the entertainment of the public or into one for promoting publicity for the judge.

Using such a trial for the entertainment of the public or for satisfying its curiosity shocks our sensibilities. The promotion of publicity for a judicial officer by such means is prostitution of a high office for personal advantage and is contrary to Canon 34 of the Canons of Judicial Ethics which provides that a judge should not "administer his office for the purpose of advancing his personal ambitions or increasing his popularity."

The Courts and Admissions to the Bar

"While the present situation is serious, this is a time neither for Cassandras nor for Pollyannas. The courts of the land have the power in their hands to regulate admissions to the bar, as was forcefully pointed out by the recent decision of the Massachusetts Supreme Court (In re: Opinion of the Justices to the Senate, 180 N. E. 752). By laying down strict qualifications for admission and by standing behind the bar examiners in recognizing law study only in approved schools they can do a great deal toward improving future conditions in the profession."—From *Notes on Legal Education*, June 25.

Plan for Temporary License to Practice Is Adopted by United States District Court for District of New Jersey

BY JOHN KIRKLAND CLARK
Chairman of the Section of Legal Education and Admissions to the Bar of the American Bar Association

A PLAN for a temporary license to practice before it has been adopted by the United States District Court for the District of New Jersey as a rule of admission to that Court. The rule as promulgated provides that an attorney is first admitted only for a period of five years. After the expiration of three years from the date of his admission he may make application for final admission. The character and ethics committee of the state bar association and of the county bar association of the county in which the applicant practices will then have the burden of making an investigation of the applicant's record, of determining whether or not he is worthy of the confidence of the court and public, and of making recommendations in reference to his fitness for admission. The court will finally pass on the matter and will satisfy itself that the applicant is qualified as to a knowledge of the Constitution and laws of the United States and the practice and procedure of the United States District Court. Judge William Clark of the Federal District Court of New Jersey is responsible for the adoption of this rule, which he first suggested at a dinner of the Legal Club in Philadelphia in the winter of 1928, and believes that if properly administered it will have a very salutary effect. In announcing the rule Judge Clark declared that the court believed the bar examiners and character committee obtain only a very inadequate indication of the final intellectual and ethical development of a young man of twenty-one or so who has had no experience in the trials and temptations of actual practice.

This has some of the features of the Junior Bar plan advocated by Lloyd Scott, Esq., of the New York City Bar Association's Committee on Legal Education. It has been ably discussed by Mr. Alfred Z. Reed, of the Carnegie Foundation for the Advancement of Teaching, in the 1929 "Annual Review of Legal Education" published by that institution. Concerning it Mr. Reed said: "While no panacea, it promises, in the judgment of the writer, to do more to supply the deficiencies commonly imputed to the preparation of lawyers than any other specific project that has come to his attention and that would have any chance of adoption at the present time."

The experiment in New Jersey will be watched with considerable interest, as it is the first time that the rule has actually been put into practice. In the state of Oregon, foreign attorneys who comply with other requirements are licensed to practice for a period of two years. After the expiration of that time, if no objection is filed the applicant may be permanently admitted, but anyone is privileged to object to the final admission of a person who has been temproarily licensed, and if such objection is filed there is a final hearing before the Court, which may in its discretion either continue or revoke the temporary license.

The Bar Association of Kansas has recommended that a probationary period of three years be provided for all those who are admitted to practice law, and that a certificate shall be issued "which certificate shall be conditioned upon and subject to one subsequent extension for all holders thereof who are residents of this state on or after three years from the date thereof, which extension shall be issued upon the order of the Supreme Court upon a favorable report of the State Board of Law Examiners as to the practitioner having strictly observed and faithfully complied with all the provisions of the Code of Professional Ethics since the date of his certificate of admission."

The Michigan State Bar Association Committee on Legal Education and Admissions to the Bar, in a report made last year which was adopted by the Association, has found the subject of probationary admission worthy of further study. Their report says in regard to this:

"In view of these difficulties in ascertaining the character and qualities of applicants for admission to the bar, a suggestion recently repeated, that there be a reorganization and a check-up on conduct, say five years after admission to the bar, is most interesting. We believe that there is more hope of accomplishing something in the desired direction through some such method as this than in questionnaires and oral examinations at the time of the first admission to the bar. The committee suggests that the members of this association give careful thought to the proposal just referred to. There has been experience with something like this plan in Scotland, and perhaps elsewhere."

The rule adopted in the United States District Court for the District of New Jersey is as follows:

GENERAL RULE NO. 2—ADMISSION OF ATTORNEYS, ETC.
(Adopted March 2, 1932)

1. The bar of this Court shall consist of those persons heretofore admitted to practice in this Court or in the Circuit Court of the United States, for the District of New Jersey, and those who may hereafter be admitted to practice in accordance with this rule.

2. Any attorney of the Supreme Court of the State of New Jersey may be admitted as an attorney, proctor or solicitor of this Court on motion of a member of the bar of this Court, made in open Court, and upon taking the oath prescribed by the Constitution and laws of the United States, and signing the roll; provided, however, that such admission as to any person hereafter admitted shall permit such person to practice in this Court as attorney and proctor and solicitor for a period of five years only from the date of such admission, and, unless such attorney and proctor and solicitor so admitted shall apply for admission as counsellor and advocate within five years from the time he or she shall be originally admitted, the right to practice as an attorney and proctor and solicitor in this Court shall end and determine, unless by special order of the Court such period of time shall be continued, which in no case shall be for an extended period of more than five years.

3. Any attorney, proctor or solicitor, heretofore or hereafter admitted, at any time after the expiration of three years from the date of his or her admission, may be admitted as a counsellor and advocate of this Court, by making application for such admission on the opening day of any regular term thereof.

Before such application shall be granted, such attorney, proctor or solicitor must show to the satisfaction of this court,

(1) that he or she is a counsellor of the Supreme Court of the State of New Jersey, (2) that at least three months before the opening day of the term at which he or she intends to apply for final admission to the bar of this Court, he or she has notified the clerk of this Court, in writing, of his or her intention to make such application, (3) that at least three months prior to such application he or she has advised the chairman of the character and ethics committees of the state bar association and of the county bar association of the county in which he or she maintains his or her principal office, in writing, of his or her intention of making such application, (4) that he or she is qualified as to the constitution and laws of the United States and the practice and procedure of this Court, and is worthy of the confidence and trust of the Court and of the public.

4. Any attorney, proctor or solicitor, or counsellor or advocate, being a member in good standing of the bar of any District Court of the United States, and having an office for the regular transaction of his or her business in that District, or if having offices in more than one District, having his or her main or principal office in such District, may be admitted to practice as attorney, proctor or solicitor, or counsellor or advocate, as the case may be, in this Court on motion of a member of the bar of this Court; provided, however, any attorney, proctor, solicitor, or counsellor or advocate, may at any time and in the discretion of the Court be admitted pro hac vice, without complying with other provisions of this rule.

Before such motion is granted, such attorney must show to the satisfaction of this Court, (1) that at least three months before the opening day of the term at which he or she intends to apply for final admission to the bar of this Court, he or she has notified the clerk of this Court, in writing, of his or her intention to make such application, (2) that he or she is qualified as to the practice and procedure of this Court, and is worthy of the confidence and trust of the Court and of the public.

5. The attorneys and proctors and solicitors, and counsellors and advocates, who, because of objection or otherwise, have not satisfied the Court, upon such application, that they should be admitted as attorneys, proctors and solicitors, counsellors and advocates, may, if they so desire, petition the Court for an order to show cause, (which shall be granted as of right) why they should not be so admitted. Upon the return of this rule, the question of the right to admission shall be heard by at least three judges of the Court (the judge having previously determined the right of admission being entitled to sit thereon). Said hearing shall be in open Court. The Court shall be attended by the United States Attorney who shall present the matters in opposition to admission. The applicant may apear either pro se or by counsel.

WILLIAM CLARK, GUY L. FAKE, JOHN BOYD AVIS, Judges.
Dated March 2, 1932.

Should the World's Legal Profession Organize?—Reasons for Taking This Step—Outline of Plan for Consideration

BY JOHN H. WIGMORE
Professor of Law, Northwestern University

1. The legal profession throughout the world has the strongest ties that ought to bind,—ties of sentiment, ties of public duty, ties of common experience in human nature.

Lawyers are apt to think of foreign law as something alien and irrelevant. Yes, the *law* may be that—at any rate to most of us; but not the lawyers.

Cicero, our great predecessor, long ago told us, "Quibus autem Lex et Jus sunt inter eos communia, et civitatis eiusdem habendi sunt." (Those whose common interest is Law and Justice should be regarded as belonging to the same civic fellowship.)

The personal side of our profession draws us together. The fact is that the lawyers, and all who belong in the legal profession—judges, teachers, legislators, prosecutors—have a common fund of tradition and experience in all countries. Whenever a lawyer from abroad visits our bar associations, we treat him like a brother. His views and his anecdotes confirm this fraternal feeling.

Why should not this world-wide fraternity become conscious of itself in a world-wide organization of some sort?

2. Now the strange fact is that we are *almost the only profession or occupation* in the whole social sphere that is not yet so organized.

There is a Handbook of International Associations, published for the League of Nations. It contains 60 pages or more, listing many hundred such associations. All the occupations are there, from the astronomers to the zoologists. The cooks are there; also the poultry-instructors and the seed-crushers. Among the technically trained professions there are the accountants, the dentists, the physicians and surgeons, the chemists, the geographers, the librarians, the pharmacists, the psychologists,—and so on.

They are all there. Only the legal profession is notable by its absence.

There are indeed a few legal groups of limited interest,—such as the Inter-Parliamentary Union and the International Law Association; and also a few small and select bodies based on election as to a club,—such as the Institute of International Law and the International Academy of Comparative Law. And there are at least two associations with aspiring names but only local scope,—the International Association of Advocates, located in Vienna; and the International Bar Association, located only on the west coast of the Pacific Ocean. But these are mere isolated globules in the formless cosmos of the legal profession.

The great negative fact remains that our profession is the *only* occupation in the world that has not organized itself. Lawyers are relied upon as chief organizers of their own governments; yet they have not organized themselves. In this era, emphatically one of social organization, this fact should stimulate us to gird up our loins and remove that shortcoming.

3. The opportunity to do so presents itself attractively at the forthcoming International Congress of Comparative Law, to be held in the Peace Palace at the Hague, August 2-6. There has been no such Congress of lawyers in any country since that of 1904 at the St. Louis Louisiana Purchase Exposition. At this one of 1932 more than 50 countries will send delegates, and the lists of delegates already chosen show that the personnel will be representative of the best professional standing and opinion. The opportunity should not be neglected.

On such an occasion some concrete plan—any plan, so long as it is a plan, not merely a pious wish—will serve to speed up the movement. Accordingly the following plan has been prepared by the undersigned, and will be offered, if the agenda permit. It is here printed for the information of those who will not attend the Congress.

Introduction

The time is ripe for a world-wide permanent co-ordination of the legal profession.

Two or three meritorious attempts have already been made to form associations extra-national in their scope. But their

success has thus far been limited. This Congress affords a unique opportunity to lay the foundations for a complete success in that field.

The following suggestions of a general scheme are offered with diffidence. Perhaps they may serve at least to evoke criticism, to focus differences of opinion, and thus eventually to stimulate the formulation of a plan upon which all can agree.

These suggestions are presented under three heads:

I. AIMS TO BE AVOIDED
II. AIMS TO BE INCLUDED
III. GENERAL PRINCIPLES OF A CONCRETE PLAN

I. Aims to Be Avoided

1. There need be no expectation of achieving *practical results* in any specific field of law. Time alone can produce such a development. Propaganda should be no part of the aim.

2. There need be no express purpose of *assimilating the law* of different nations. Independence and variance will always be inevitable, as well as healthy, in the vast field of law.

3. There need be no desire to *represent the national governments.* The legal profession (like the medical and engineering professions) has a social existence independent of government. Government delegates do not possess the necessary freedom of opinion for such conferences.

4. There should be no purpose to *promote professional clientage* by exchanging references to clients, or in any other way. The public interests of the profession must be kept separate from the interest of mutual personal profit.

II. Aims to Be Included

1. The co-ordination should include all four branches of the profession (in the broadest sense), viz. judges, practitioners, professors, legislators,—the bench, the bar, the universities, the legislatures.

2. The main basis should be the respective *organizations* in the different nations, *not* the individual person. These organizations would be represented by delegates. By this means alone can the co-ordination be made truly representative of professional opinion. But all varieties of national organizations may be included, e.g., of practitioners, of law faculties, of judges, of prosecutors, etc., etc. Local organizations, not having a national scope, can also receive recognition.

3. The main activities of the international body, in the interval between Congresses, should be the *exchange of information,* i.e., on all matters having interest for the profession. At the Congresses, the current problems of mutual interest would be debated.

4. Several *group* centres should be used for gathering the information and forwarding it to the other centres for distribution. No one headquarters need be selected.

5. The expenses would be met by *contributions from the respective national organizations,* to defray the cost of the staff employed at the group centres for gathering and distributing information.

III. General Principles of a Concrete Plan

1. A Drafting Committee to be appointed, to meet at ———— in 1933 to prepare a draft constitution. One or more leading national organizations in each nation to be invited to name representatives to sit on this Committee. The Draft to be circulated to all organizations in the interim. A representative Congress to meet in 1935 to discuss this plan. The draft plan, as adopted by this Congress, to be circulated to all organizations for acceptance.

The Plan to include the following features:

2. The name to be: THE INTERNATIONAL JURISTIC INSTITUTE, or THE INTERNATIONAL FEDERATION OF JURISTS.

3. Each nation to have a national Section of the Institute (as in the International Chamber of Commerce). This Section to be composed as each nation may deem most feasible; but the usual basis to be by representation of delegates from the several national associations representing the various branches or activities of the profession in that nation, e.g., judges, practitioners, faculties of law, legislators, etc., etc.

This Section to be the organ of communication between the various bodies within its nation and the international body.

4. Five Centres to be selected, representing the five most usual languages, viz., English, French, German, Italian, Spanish, and all the various nations to be grouped under these five Centres.

All information forwarded to these respective centres to be translated into the other four languages and forwarded in a printed periodical to the other four Centres, and by them to be distributed to the national Sections within their group.

5. The information to include summaries of the proceedings of the national associations, of legislation, of judicial opinions, and in general of current problems having practical importance for the profession.

6. A Congress to be held triennially, at different national capitals; the program for the Congress to be prepared by a prior conference of delegates from the several national Sections.

7. The recommendations, if any, of the triennial Congress to be communicated by the respective national Sections to their Governments for action.

8. The officers of the national Sections to be selected by the Sections; the officers of the Congress to be selected by each Congress from time to time.

Arrangements for the Fifty-Fifth Annual Meeting

(*Continued from page* 520)

as mentioned in preceding paragraph) containing a double bed may be occupied by two persons, at an additional charge of $2.00.

A twin-bed room contains two single beds to be occupied by two persons. A twin-bed room will not be assigned for occupancy by one person.

A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with parlor.

Every room has tub or shower or both.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservations, stating hotel desired, number and rate for rooms required, names of persons who will occupy the same, and arrival date, including definite information as to whether such arrival will be in the morning or evening.

The allotment of rooms at the Mayflower Hotel will very shortly be exhausted. It is suggested, therefore, that in making requests for reservations, members specify a second choice from the hotels listed, so that reservations may be made promptly and without additional correspondence.

Reservations should be made as early as possible. Requests should be addressed to the Executive Secretary, 1140 North Dearborn Street, Chicago, Illinois.

Reduced Rates for the Washington Meeting

The usual arrangement enabling members attending the meeting to secure a reduction of 25% from the round trip rate will be made with the Passenger Associations, and Individual Identification Certificates will be distributed to members of the Association in advance of the meeting. A more detailed announcement will appear in the next issue of the Journal.

National Conference of Commissioners on Uniform State Laws

The next Annual Meeting of the Conference will be held at the Hotel Mayflower, Washington, D. C., beginning Tuesday, October 4, 1932. Applications for hotel reservations should be made to the Executive Secretary of the American Bar Association, 1140 North Dearborn Street, Chicago, Illinois.

Deaths of Members Reported

The Journal publishes with regret the death of the following members of the Association:

Mr. E. C. Million, of Seattle, Wash., on April 8th. Mr. Million joined the Association in 1928.

Mr. J. Bernard Handlan, of Wheeling, W. Va., a member since 1921, on June 19th.

Mr. Farrell D. Minor, of Beaumont, Texas, who joined the Association in 1913, on April 28th.

Mr. August Frieberg, of Beresford, S. D., on May 16th. Mr. Frieberg became a member in 1926.

Mr. William J. Barton, of Pittsburgh, Pa., on June 5th, 1932, having been a member since 1924.

Mr. Frederick L. Breitinger, a member of the firm of Breitinger and Millar, Philadelphia, Pa., June 25th. Mr. Breitinger joined the Association nearly twenty years ago.

Mr. Arthur Clarke, of Corvallis, Oregon, who joined the Association in 1916, on April 16th.

Mr. Jeremiah M. Sheehan, of New York City, a member since 1925, on April 18th.

Mr. William J. Patterson, of New York City, on June 18th. Mr. Patterson joined the Association in 1925.

Mr. George E. Gartland, of New York City, on June 29th.

Mr. George Lester Lewis, of Manhasset, N. Y., a member since 1924, on April 26th.

Mr. Walter H. Bacon, of Bridgeton, N. J., a member for twenty years, on April 3rd.

Mr. John W. Cutrer, a member of the firm of Cutrer and Smith, of Clarksdale, Miss., on June 10th. Mr. Cutrer joined the Association in 1912.

Mr. John B. Deming, a member of the firm of Keech, Deming, Carman & Tucker, Baltimore, Maryland, died on May 11th. Mr. Deming was a member of the Association for thirty years.

Mr. Frank J. Carroll, of Chicago, Ill., on April 13th. Mr. Carroll had been a member for the past ten years.

Mr. John T. Lillard, of Bloomington, Ill., a member since 1925, on April 29th.

Mr. Benjamin B. Pettus, of the firm of Colladay, McGarraghy, Pettus & Wallace, Washington, D. C., on April 1st.

Hon. George P. McLean, of Simsbury, Conn., on June 6, 1932. Senator McLean had been a member since 1914.

Mr. Arthur M. Ellis, of Los Angeles, Cal., a member of the Association since 1922, on April 17th.

Hon. R. D. Rasco, De Witt, Ark., a member for nearly twenty years, on April 23rd.

Mr. J. Gordon Macdonald, of Baltimore, Maryland, a member of the Association since 1923, died April 11th, 1932.

Mr. Leon P. Lewis, of Louisville, Kentucky, on May 6, 1932.

Mr. Walter C. Rodman, Philadelphia, Pa., who joined the Association in 1913, on May 30, 1932.

Mr. Evans Holbrook, of Ann Arbor, Mich., June 6, 1932. Mr. Holbrook became a member in 1922.

Hon. C. Rosenmeier, of Little Falls, Minn., a member since 1923, on June 2nd.

Mr. Fritz L. Radford, of Detroit, Mich., on June 3rd. Mr. Radford had been a member of the Association for the past ten years.

Mr. Cyrus C. Wells, of Rochester, N. Y., who joined the Association in 1926, died June 12th.

Mr. Merle N. Poe, Findlay, Ohio, General Counsel of the Ohio Oil Company, and a member of the Association for the past four years, on March 11th.

Mr. Jacob B. Klein, Bridgeport, Conn., a member since 1913, on March 17, 1932.

Mr. David N. Postlewaite, Columbus, Ohio, on March 12, 1932. Mr. Postlewaite became a member in 1914.

Mr. Henry M. Hagelbarger, Akron, Ohio, on February 27th, this year. He had been a member of the Association for the past seven years.

Mr. Niel A. Weathers, of New York City, a member since 1922, on January 12, 1932.

Mr. Harry J. Robinson, of New York City, died January 14th, 1932. Mr. Robinson joined the Association in 1922.

Mr. William P. Colgan, Buffalo, N. Y., a member of the Association for the past five years, in March, 1932.

Mr. D. R. Barnett, of Yazoo City, Miss., a member for more than twenty years, died in the latter part of January, 1932.

Mr. Samuel T. Douglas, of Detroit, Mich., on March 27th. Mr. Douglas joined the American Bar Association in 1909.

Mr. William J. Galbraith, of Calumet, Mich., on March 3rd. He had been a member since 1921.

Hon. George N. Gardiner, New Bedford, Mass., on March 7, 1932. Judge Gardiner had been a member since 1916.

Mr. Fred H. Williams, of Boston, a member since 1913, on January 21st last.

Mr. Horace Van Everen, of Boston, March 23, 1932. Mr. Van Everen joined the Association in 1908.

Mr. Gilbert A. A. Pevey, of Boston, who became a member in 1907, on March 15, 1932.

Mr. Benjamin N. Johnson, of Boston, Mass., a member of the Association for more than forty years, died at Lynn, Mass., on February 19, 1932.

Mr. George W. Miller, of Chicago, Ill., on January 21st last. Mr. Miller had been a member since 1916.

Hon. Marcus H. Holcomb, Southington, Conn., a member for the past five years, on March 5th.

Hon. Robert S. Alexander, of Danbury, Conn., on May 14th last. Judge Alexander joined the Association in 1924.

Hon. James O. Campbell, Butler, Pa., in January of this year. Judge Campbell had been a member for the past five years.

Mr. W. F. Corrigan, of Aberdeen, S. D., who joined the Association in 1920, on February 2nd of this year.

Mr. Frank W. Houghton, of Milwaukee, a member of the Association for twenty years, on February 4, 1932.

Mr. Lynn F. Seiler, of Long Beach, Calif., a member of the Association since 1926, died on March 13th. Mr. Seiler was 36 years of age and had practiced law in partnership with his father, Oscar J. Seiler.

Mr. Charles B. Morrison, of Dixon, Ill., former United States Attorney at Chicago, died in his home at Dixon, on April 25th, at the age of seventy-nine. Mr. Morrison became a member in 1916.

Mr. William D. Van Dyke, of Milwaukee, Wis., who joined the Association nearly forty years ago, died June 7, 1932.

Mr. Frederic M. Stone, of Milton, Mass., a member for over thirty years, died April 8, 1932.

Mr. George A. Sanderson, of Littleton, Mass., died June 11, 1932. Mr. Sanderson joined the Association in 1919.

Mr. James M. Martin, of Minneapolis, Minn., a member since 1912, died June 18th.

Hon. Claude Z. Luse, of Madison, Wis., died May 28th, 1932. Judge Luse became a member of the Association in 1923.

Our Growing Prison Population

The Department of Commerce has made a preliminary announcement of the results of the 1931 annual census of State and Federal prisons and reformatories.

Detailed statistics, says the announcement, have been received for 44 States and the District of Columbia, covering 98 State prisons and reformatories, 6 Federal prisons, and 9 Federal prison camps, out of a total of 117 of all kinds of State and Federal penal institutions. No reports for 1931 have been received from the State prisons of Idaho and Mississippi and only partial reports from the Alabama and Georgia State prisons.

For the United States in 1931, exclusive of Alabama, Georgia, Idaho, and Mississippi there were 60.6 prisoners admitted from courts per 100,000 of the general population as compared with 51.2 in 1929. The males show a steady increase during the past three years while the females show a steady decrease.

A continuous increase is shown for the total prisoners discharged as well as for those whose sentence expired and those who were paroled. The increase in the number of prisoners paroled was greater from 1929 to 1930, 22.3 per cent, than from 1930 to 1931 when it was 17.7 per cent. Of the 1931 discharges 65,178 were males and 3,207 were females.

The above statistics, the announcement concludes, have been obtained from reports furnished to the Bureau of the Census by the wardens of the different prisons, with the cooperation of the State agencies in charge of such institutions. The 1931 figures are preliminary and subject to correction.

NEWS OF STATE AND LOCAL BAR ASSOCIATIONS

Arkansas

GEORGE A. MCCONNELL
President, Arkansas Bar Association

Arkansas Bar Elects Its Second Republican President—American Bar Association President Delivers Address

George A. McConnell, well known Little Rock attorney, was elected president of the Arkansas Bar Association at the close of the annual meeting of the organization, according to the Arkansas Democrat of May 28. Roscoe R. Lynn of Little Rock, was again chosen secretary and treasurer. Paul Jones of Texarkana was unanimously elected vice president.

"Regarded as one of the outstanding lawyers of the state," the article continues, "Mr. McConnell has been practicing law in Little Rock since 1906, when he was admitted to the Supreme Court bar and entered the legal department of the Rock Island railroad. He represented the railroad for four years and in 1910 established a general practice which he has maintained since.

"Mr. McConnell will be the second Republican ever elected to the presidency of the association. He was urged for appointment as federal judge for the eastern district of Arkansas upon the death of Judge Jacob Trieber in 1927.

"He received his academic and legal education at the University of Arkansas and is past president of the Little Rock Bar Association. He is a member of the Little Rock Country Club, Spring Lake Club, Cooper Lake Hunting Club, and past president of the Little Rock Athletic Association.

"The state government of Arkansas came in for a severe 'going over' at the symposium on state government conducted by the Bar Association Friday. The outline and purpose of the symposium was given by J. H. Carmichael of Little Rock, after which C. A. Walls of Lonoke loosed both barrels on the executive department.

"Mr. Walls said he did not intend to deal with proposed amendments or initiative acts relating to that department because they are in the embryonic stage and 'most of them are so far-fetched and theoretical as to afford no relief.' Others he characterized as 'radical.'

"Launching into his discourse, he declared 'It was the intention of the framers of our Constitution that the executive department should, in fact, exercise executive functions; that the governor, as chief executive officer, should know what is going on in the state and be a governor in fact, and not in name only. In recent years, with the continual addition of boards, bureaus, commissions and departments, it is impossible to tell where real executive functions begin or end.'

"Declaring that Arkansas can boast of having the worst assortment of so-called administrative agencies of any state, Mr. Walls advocated 10 executive departments 'instead of having 100 district boards, bureaus and commissions,' all headed by high-salaried officials.

"George B. Rose, veteran attorney of Little Rock, in a paper entitled 'Bar Associations of Arkansas' declared there have been three bar associations in this state. The first, consisting chiefly of Little Rock lawyers, was organized in 1857, when the commonwealth was only one year old. Among the members were Chester Ashley and Albert Pike. The first organization was swept away during the Civil war.

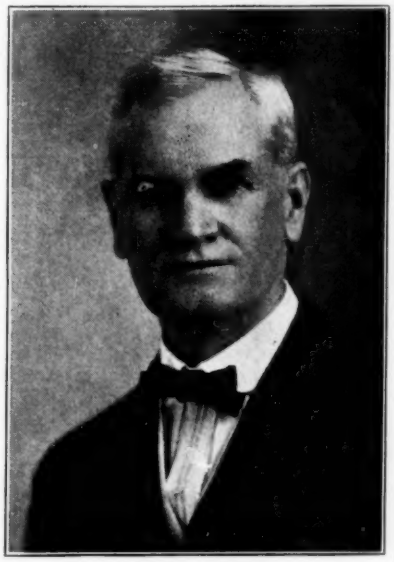
"Although the present bar association was formed in 1882, there was a period a short time later during which it ceased to function, making the present group really the third, he said. It has the same constitution, however, as the 1882 organization, and is observing its 'Golden Jubilee' during the present meeting.

"While there is widespread criticism of the legal profession at present, the responsibility of the layman is entirely overlooked, Hon. Guy A. Thompson of St. Louis, president of the American Bar Association, declared in his address. The layman bears an intimate relationship to the administration of justice, he pointed out, as all executive positions are filled by votes of laymen, and grand and petit juries are composed of ordinary citizens."

President Thompson scored the prevalent indifference to voting, the whimsical verdicts of juries, and the evasion of jury service. Declaring that delay in courts is undermining confidence in the judicial system, he urged lawyers to concentrate upon speeding up action on the civil as well as the criminal law side.

The address of welcome was delivered by E. H. Wootton of Hot Springs, with a response by E. B. Downie, Little Rock.

Kentucky



M. C. SWINFORD
President, Kentucky Bar Association

Kentucky Association Instructs Committee on Bar Organization to Continue Working for Bill Defeated at Last Session of Legislature —Addresses Made, Etc.

The Thirty-first Annual Meeting of the Kentucky State Bar Association was held at Louisville, Kentucky, April 7th and 8th, 1932.

The address of welcome was delivered by Shackelford Miller, Jr., President of the Louisville Bar Association.

J. Verser Conner, the retiring President of the Kentucky State Bar Association, in the annual President's Address, gave a very interesting resumé of the chief points of interest in the history of the Association. The subject of his address was "A Half Century of Bar Organization in Kentucky, 1882-1932."

Other addresses delivered at the meeting were the following: "Some Great Lawyers of Kentucky," by Alfred Seligman, Louisville; "The Function and Trends of County Government," by Judge R. C. P. Thomas, Bowling Green; "Some Reminiscences of Fifty Years of Court Reporting," by Clarence E. Walker, Louisville; "The United States Board of Tax Appeals," by Virgil Y. Moore, Madisonville; "Bus and Automobile Law," by R. W. Keenon, Lexington.

The Membership Committee reported a large number of new members during the year 1931-1932.

The Committee to Promote Bar Organization reported that the 1932 Ken-

tucky legislature had failed to pass the Bar Organization Bill.

The Committee was re-appointed with instructions to continue working on the bill in the hope of obtaining passage at the 1934 Legislature.

Judge Richard P. Dietzman, Chief Justice of the Court of Appeals of Kentucky, gave a very interesting report on the work of the Judicial Council.

The principal address was delivered by Honorable J. Hamilton Lewis, United States Senator from Illinois, at a banquet on the evening of the first day of the meeting. His subject was, "Wanted: An American Foreign Policy."

Senator Barkley, of Kentucky, delivered an interesting address at the luncheon meeting held at the Pendennis Club on April 7th.

The following officers were elected for the ensuing year: President, M. C. Swinford, Cynthiana; Secretary, Wilson W. Wyatt, Louisville; Treasurer, William B. Gess, Lexington; Vice-Presidents—James Breathitt, Jr., Hopkinsville; A. D. Kirk, Owensboro; E. B. Beard, Shelbyville; Robert F. Vaughan, Louisville; J. Owen Reynolds, Lexington; Matt Herold, Newport; B. J. Bethurum, Somerset.

The Executive Committee is composed of the following: O. M. Rogers, Covington; E. D. Stephenson, Pikeville; Clifford E. Smith, Frankfort; Lorenzo K. Wood, Hopkinsville; Max B. Harlin, Bowling Green; J. Verser Conner, Louisville, and the President, Secretary and Treasurer, Ex-Officio.

WILSON W. WYATT, Secretary.

Louisiana

Louisiana Bar Favors Repeal of Eighteenth Amendment—Adopts Resolutions on Proposed Legislation—New Officers Elected—Interesting Addresses Made, Etc.

The thirty-fifth annual meeting of the Louisiana State Bar Association was held in the City of New Orleans, Louisiana, on Friday and Saturday, April 29th and 30th, 1932. It was well attended and much interest was manifested by those present.

The President's address was delivered by Hon. Charles E. Dunbar, Jr., New Orleans, his subject being "Some of the Evils and Conditions of Today Which Threaten to Destroy Our Economic System and Democratic Institutions." Mr. Dunbar's address showed thought and study and was very well received.

Hon. Joseph C. Hutcheson, Jr., United States Circuit Judge of Houston, Texas, addressed the Association on the subject "Some Observations on Stare Decisis, Stare Dictis, and the Ratio Decidendi of Decided Cases." His address was given much commendation. Hon. Robert Lynn Batts of Austin, Texas, addressed the Association on "Constitutional and Other Limitations on the Police Power." His address was interesting and instructive.

The 1931 Annual Meeting of the Association adopted a resolution endorsing in principle the proposition that the Association should interest itself and exert its due influence in the selection of judicial candidates, and providing that the method by which this should be done should be left to the Executive Committee to be submitted back to the Association. Under the authority of this resolution, the Executive Committee appointed a special committee composed of Messrs. Monte M. Lemann, Chairman, Cuthbert S. Baldwin, Paul Kramer, Frank P. Stubbs, Benjamin B. Taylor, Howard B. Warren and Horace H. White, to study the subject and make recommendations as to the procedure which should be adopted. The Committee's report and recommendations were approved by the Executive Committee and sent by mail, with forms and explanation of the President, to the members of the Association for discussion and vote at the 1932 Annual Meeting of the Association. The Association approved the plan as covered by the Committee's report, which was presented by Chairman Lemann, and adopted same.

JOSEPH D. BARKSDALE
President, Louisiana Bar Association

The Co-ordinating Committee, through Walker B. Spencer, its Chairman, made its report. It stated that at the 1930 annual meeting of the Association the Committee submitted a proposed legislative Act respecting amendments to certain articles of the business corporation law, to clear up certain ambiguities or apparent conflicts between the provisions of that law, and an Act respecting the appointment of a commission to revise the General Laws of Louisiana. Both these recommendations were approved by the annual meeting at its 1930 session, and were submitted to the Legislature, but failed to pass on account of lack of time for their consideration in the Senate. The Committee recommended that the proposed act amending the Corporation Law should be again presented to the Legislature, and that the Act authorizing the appointment of a Commission to revise the General Laws be again submitted if the Annual Meeting deemed it expedient and proper.

The Co-ordinating Committee submitted to the Annual Meeting, for its consideration, with the recommendation that same be approved, the following proposed legislation for the 1932 Legislature:

(1) A Declaratory Judgments Act, which, after much discussion, was referred back to the Committee on Delaratory Judgments for further action.

(2) An act proposing an amendment to Article VII, Section 3, of the Constitution to prohibit Judges of the City Courts of New Orleans from practicing law. The Association adopted an amendment to this proposed law making it apply to cities with populations of over 50,000, and approved it as amended.

(3) A Uniform Act providing for the Compulsory Attendance of Non-Resident Witnesses in Criminal Cases pending in this State, and providing for a Reciprocal Law requiring the Attendance of Witnesses in Criminal Cases pending in other states, where by the laws of those states, witnesses in criminal cases in this state may be required to attend. This was approved.

(4) An act proposing amendments to the Uniform Warehouse Receipts Act (Act 221 of 1908, La.). (5) A Uniform Act relating to the Licensing of Aeroplane Pilots, etc. (6) An Act proposing an Amendment to the Constitution creating a Municipal Court for the City of New Orleans, and an Enabling Act to carry same into effect, and abolishing the Recorders' Courts of the City of New Orleans and consolidating said Courts into one Court, and providing that Judges thereof shall be Lawyers, and otherwise fixing their qualifications. (7) An Act making it a Misdemeanor for any Person to issue any Paper or Document which simulates a Court Document, that may be issued with intent to collect any Money or Thing of Value from any Debtor. (8) A Proposal submitted by the American Bar Association that the Convention go on record as favoring the Ratification by the Louisiana Legislature of a proposed Constitutional Amendment changing the date of the Presidential Inauguration, and regulating the Sessions of Congress. (9) An Act relating to Nolle Prosequi Proceedings. (10) An Act relating to Kidnaping. (11) An Act relating to the Qualifications of the Judge of the Juvenile Court of New Orleans. (12) An Act relating to Psychiatric Services in the Penitentiary. (13) An Act amending Article 1029 of the Code of Practice, regarding the Homologation of Partitions.

All of the above acts were approved by the Association for submission to the 1932 Legislature.

In conformity with conclusions reached by previous annual meetings of the Association, the Committee on Legal Education and Admission to the Bar, Eldon S. Lazarus, New Orleans, Chairman, sent, in advance of the Annual Meeting, to the members of the Association, including its ex-officio members (Members of the Judiciary), a copy of its proposed bill for introduction to the 1932 Louisiana Legislature, relating to admission to the bar. This proposes to eliminate the provision that the Supreme Court shall not make the requirements higher than a high school education, or its equivalent (Act 113 of 1924), and "to leave the matter of prelegal educational requirements entirely to the Supreme Court, which already has

broad authority upon the matter of admission to the bar in other respects." The bill was approved by the Association.

The report of the Committee on Jurisprudence and Law Reform, Henry P. Dart, Jr., Chairman, New Orleans, was followed by the report of the Committee on Uniform State Laws, Charles A. Duchamp, Chairman, New Orleans. This committee expressed the opinion that the Uniform Sales Act merits careful consideration by the Bar of Louisiana; that uniformity in the law of sales of personal property is more important than uniformity in almost any other branch of the law; and strongly urged the appointment of a special committee to deal with that important subject. The recommendation was adopted.

The Committee on Local Bar Associations, Herbert W. Kaiser, Chairman, New Orleans, recommended, in view of certain conditions, that in the future the membership of the Committee on Local Bar Associations be made up of the Vice-Presidents of the Association with a Chairman who is not an officer of the Association." Adopted.

The report of the Secretary-Treasurer, W. W. Young, New Orleans, showed the Association's finance and membership in satisfactory condition.

The membership Committee of Nine, Ivy G. Kittredge, Chairman, New Orleans, reported an increase in membership for the past year.

The report of Committee on Grievances, Charles J. Rivet, Chairman, New Orleans, summarized its work for the year, and the Legal Aid Committee, W. J. Waguespack, Chairman, New Orleans, reported it had attended to 390 cases.

The report of the Committee on the Work of the American Law Institute, which was presented by Dean Rufus C. Harris, a member of the Committee, of New Orleans, detailed the most striking things which have been done by the American Law Institute and suggested the appointment of a Committee from the Association to examine the Code of Criminal Procedure and make to the Association such recommendations as may seem appropriate. Adopted.

The Committee on Incorporation of the Bar by Legislative Enactment, Ralph J. Schwarz, Chairman, New Orleans, recommended that no action on this subject be taken by the Annual meeting of the Association. The matter was referred to the Executive Committee for further investigation.

After reports of various other Committees, a resolution was offered, asking for the repeal of the Eighteenth Amendment, but it failed of adoption. However, the Annual Meeting passed a resolution providing that the Executive Committee of the Association be instructed to send out a referendum to the membership of the Association putting to them the question whether they were in favor of, or against, the repeal of the Eighteenth Amendment; that the result of that referendum be published within sixty days after April 30, 1932; and that the machinery of the American Bar Association, on a similar question, be adopted. It was also resolved that the signature of the member to the ballot would be required.

In accordance with the above, a ballot was sent to the membership requesting them to mark and sign and mail to the Secretary. These were counted at a meeting of the Executive Committee and of the 490 ballots cast, 441 favored the repeal of the Eighteenth Amendment and 49 opposed it.

The following officers were elected: President, Joseph D. Barksdale, Shreveport; Vice-Presidents, Henry G. McCall, New Orleans; Pike Hall, Jr., Shreveport; U. A. Bell, Lake Charles; Carey J. Ellis, Jr., Rayville; Charles Vernon Porter, Baton Rouge; Robert E. Brumby; Franklin; Secretary-Treasurer, W. W. Young, New Orleans.

The Executive Committee is composed of the above named officers, and the following members appointed by the President: Charles J. Rivet, New Orleans; John D. Miller, New Orleans; J. W. Hawthorn, Alexandria; George Gunby, Monroe; L. L. Perrault, Opelousas.

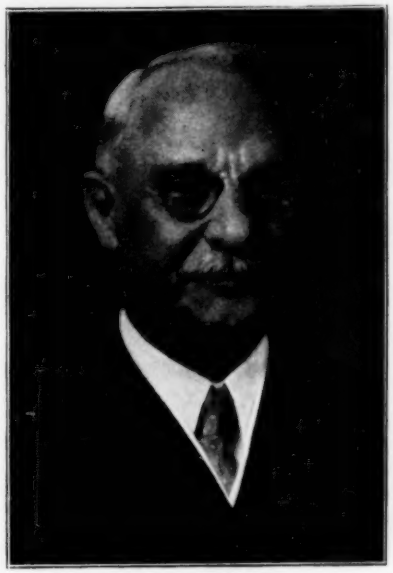
W. W. YOUNG, Secretary.

Minnesota

Minnesota Bar Again Approves Judicial Council for State—Special Meeting to Be Held Next December—President Thompson Speaks at Banquet

At the Minnesota State Bar Association's convention, which closed Friday, July 8, the following officers were elected: Chester L. Caldwell, President, St. Paul; W. F. Murphy, Vice-President, Wheaton; Wm. G. Graves, Treasurer, St. Paul; Donald C. Rogers, Secretary, Minneapolis.

The Committee on Proposed Revision of the Criminal Code submitted a report in which it proposed certain changes based very largely on the uniform criminal code as prepared by the American Law Institute. Due to the fact that it was felt that this matter was of such vital importance to the Bar and public generally, and in view of the fact that the committee report was not completed until a short time prior to the annual meeting, the convention ordered that consideration of the report be referred back to the individual district bars of Minnesota for their consideration and action.



CHESTER L. CALDWELL
President, Minnesota Bar Association

The Association then provided for calling a special meeting of the State Association to be held some time in December in order that the State Association could consider this matter at that time and arrive at a definite conclusion, which will be submitted to the 1933 session of the Minnesota State Legislature, which convenes January next.

A special committee of the State Association, which has been working for the past year on the proposed revision of the Minnesota Corporation Code, also reported at the annual meeting. This committee consists of a drafting committee of ten and an advisory committee of thirty. Professor Hoshour of the University of Minnesota is draftsman for the committee. The drafting committee has been meeting weekly for the past three months. At the time of the annual meeting it had not completed even half its work. The committee hopes, however, that it will be able to complete its work so that the proposed final draft can be submitted to the special meeting of the State Association which will be held in December. This is a matter of exceptional importance to the Bar of Minnesota and for that reason the committee is spending considerable time on it.

The State Association again approved of the proposal of a Judicial Council for Minnesota and directed that the same be submitted to the State Legislature in January. Chief Justice A. M. Christianson of the Supreme Court of North Dakota gave an address at one of our sessions on the subject of Judicial Council.

Other speakers included Hon. John B. Sanborn, who spoke at one of our

sessions, and Prof. Harvey Hoshour, who discussed the drafting revision work. At our annual banquet Friday, July 8th, the speakers were Guy A. Thompson, President of the American Bar Association, and Mr. Harvey T. Harrison, a member of the Bar, Little Rock, Arkansas.

Among special features at the convention this year was a pioneer lawyers' luncheon which was held Thursday, July 7th. We had a large attendance of members of the Bar who had practiced over fifty years and who were honored guests at this luncheon.

DONALD C. ROGERS, Secretary.

New York

Federation of Bar Associations of Western New York Hears Addresses by Judge Seabury and Others—Work of State Commission to Investigate Administration of Justice

The seventh annual meeting of the Federation of Bar Associations of Western New York was held June 25th, 1932, at the Hotel Jamestown, Jamestown, New York. The Jamestown Bar Association acted as host association.

Mr. Eugene Raines, President of the Federation, presided over the morning session. Following the reading of the annual report of the President, Mr. Austin V. Cannon of Cleveland, Ohio, addressed the meeting on the subject of Selection of Judicial Candidates under the Cleveland Plan. The morning session also included an address by the Honorable Samuel Seabury, President of the New York State Bar Association.

The afternoon session, which was devoted to discussion, was under the able direction of the Honorable Cuthbert W. Pound, Chief Judge of the Court of Appeals. The Honorable Daniel J. Kenefick, Professor Raymond B. Moley of Columbia University, Robert H. Jackson of Jamestown, and Philip Halpern of Buffalo, were the principal leaders of the discussion, the subject of which was The Work of the New York State Commission to Investigate the Administration of Justice.

The meeting was followed by an informal dinner at the Club at Celeron, New York.

The new officers of the Federation are Marion H. Fisher, Jamestown, New York, President; George S. Tinklepaugh, Lyons, New York, Vice-President from the 7th Judicial District; Thomas Penney, Jr., Buffalo, New York, Vice-President from the 8th Judicial District; Hon. Nathan D. Lapham, Geneva New York, Treasurer; and Percy R. Smith, Buffalo, New York, Secretary.

PERCY R. SMITH, Secretary.

Miscellaneous

New Orleans Bar Association

A regular meeting of the New Orleans Bar Association in the form of a dinner at Antoine's Restaurant was held on March 30, 1932. The meeting was largely attended and the following addresses delivered: "The Forthcoming Hague Conference on Comparative Law" by Prof. Milton Colvin, Professor of Law of Tulane University; "The American Law Institute" by Mr. Henry B. Curtis; "The Background of the Far Eastern Situation" by Prof. C. C. Williams, Jr., of the Law Department of Tulane University, and "The Einstein Theory of Relativity or the Light that Lies in a Lawyer's Eye" by Hon. William W. Westerfield, Senior Judge of the Court of Appeal.

At the annual meeting of the members of the Fifth Judicial District (Minnesota) Bar association, the following officers were elected for the coming year: President, John Swendiman, Dodge Center; Vice President, G. P. Madden, Waseca; Secretary, Charles N. Sayles, Faribault; Treasurer, Otto J. Nelson, Owatonna.

There was a very large attendance at the meeting and a good deal of work done for the best interests of the bar.

CHARLES N. SAYLES, Secretary.

Roll of Honor

[This list includes all members who have secured applications from June 7th to July 12th, inclusive.]

Alabama

Rice, Thomas E., Birmingham.
Sims, Henry Upson, Birmingham.
Woodall, William M., Birmingham.

California

Edmonds, Hon. Douglas L., Los Angeles.
Fisk, Frederick M., San Francisco.
McCoy, Philbrick, Los Angeles.
Mullendore, William C., Los Angeles.

Connecticut

Keefe, Arthur T., New London.
Wheeler, George W., Bridgeport.

Delaware

Fearing, Justin L., Wilmington.

District of Columbia

Dopp, Lloyd H., Washington, D. C.
Oppenheim, S. C., Washington, D. C.
Smith, John Lewis, Washington, D. C.

Florida

Diver, Joseph S., Jacksonville.
Evans, W. I., Miami.

Georgia

Bennett, John W., Jr., Waycross.
Ryals, Thomas Edward, Macon.
Wilson, John R., Bainbridge.

Illinois

Baar, Arnold R., Chicago.
Pettibone, Holman D., Chicago.
Stephens, R. Allan, Springfield.

Indiana

Hatfield, Frank H., Evansville.

Kansas

Eresch, Joe H., Topeka.

Kentucky

Harlin, Hon. Max B., Bowling Green.

Maryland

Clark, Thomas W. Y., Baltimore.

Massachusetts

Allen, Horace E., Springfield.

Missouri

Thompson, Hon. Guy A., St. Louis.

New Jersey

Furst, George, Newark.
Hardin, Charles R., Newark.
Kenarik, Herbert J., Newark.

New York

Griffith, Heber E., Utica.
Warren, William C., Jr., Buffalo.

Ohio

Marshall, Hon. Carrington T., Columbus.

Oklahoma

Miley, J. H., Oklahoma City.

Pennsylvania

Battenberg, C. A., Scranton.
Brobst, Albert W., Wilkes-Barre.
Donnelly, Harry, Philadelphia.
Egan, Thomas C., Philadelphia.
Hirschwald, R. M., Philadelphia.
LaBrum, J. Harry, Philadelphia.
Schorr, Henry W., Philadelphia.
Walker, R. C., Philadelphia.
Williams, Thomas S., Philadelphia.

Tennessee

McAllester, Sam J., Chattanooga.

Texas

Fountain, E. J., Houston.
Lee, W. Edward, Longview.
Wayman, James W., Galveston.

Washington

Froude, W. E., Seattle.
Gates, Cassius E., Seattle.